



# भारत का राजपत्र

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सं. 5] नई दिल्ली, जनवरी 25, 2015—जनवरी 31, 2015, शनिवार/माघ 5—माघ 11, 1936

No. 5] NEW DELHI, JANUARY 25, 2015—JANUARY 31, 2015, SATURDAY/MAGHA 5—MAGHA 11, 1936

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह पृथक संकलन के रूप में रखा जा सके  
Separate Paging is given to this Part in order that it may be filed as a separate compilation

भाग II—खण्ड 3—उप-खण्ड ( ii )  
PART II—Section 3—Sub-section (ii)

भारत सरकार के मंत्रालयों (रक्षा मंत्रालय को छोड़कर) द्वारा जारी किए गए सार्विधिक आदेश और अधिसूचनाएं  
Statutory Orders and Notifications Issued by the Ministries of the Government of India  
(Other than the Ministry of Defence)

वित्त मंत्रालय

(वित्तीय सेवाएं विभाग )

नई दिल्ली, 20 जनवरी, 2015

का.आ. 179.—भारतीय जीवन बीमा निगम श्रेणी 3 एवं  
श्रेणी 4 कर्मचारी (सेवा के निवंधन एवं शर्तों का संशोधन) नियमावली,  
1985, के नियम 13 के उप-नियम (2) द्वारा प्रदत्त शक्तियों का  
प्रयोग करते हुए, केन्द्रीय सरकार, एतद्वारा, यह निर्धारित करती है  
कि, श्रेणी 3 और श्रेणी 4 के प्रत्येक कर्मचारी को 1 अप्रैल, 2013 को  
आरंभ होने वाली और 31 मार्च, 2014 को समाप्त होने वाली अवधि  
के लिए बोनस के बदले में भुगतान, उक्त उप-नियम में अन्य उपबंधों  
के अध्यधीन, उनके वेतन के 15 प्रतिशत की दर पर किया जाएगा।

[फा. सं. एस-11012/07/2013-बीमा-I]

एन. श्रीनिवास राव, निदेशक

MINISTRY OF FINANCE

(Department of Financial Services)

New Delhi, the 20th January, 2015

S.O. 179.—In exercise of the powers conferred by  
sub-rule (2) of rule 13 of the Life Insurance Corporation  
of India Class-III and Class-IV Employees (Revision of  
Terms and Conditions of Service) Rules, 1985, the Central  
Government hereby determine that, subject to the other  
provisions of the said sub-rule, the payment in lieu of  
bonus for the period commencing on 1st day of April,  
2013 and ending with 31st March, 2014 to every Class-III  
and Class-IV employee shall be at the rate of 15 percent of  
his/her salary.

[F.No. S.-11012/07/2013-Ins.-I]

N. SRINIVASA RAO, Director

**स्वास्थ्य एवं परिवार कल्याण मंत्रालय**

(स्वास्थ्य एवं परिवार कल्याण विभाग)

**शुद्धिपत्र**

नई दिल्ली, 15 जनवरी, 2015

**का.आ. 180.**—इस मंत्रालय की दिनांक 23 अगस्त, 2005 की अधिसूचना सं. वी.-12018/1/2004-पीएमएस में आंशिक संशोधन करते हुए विशेषज्ञता एम. एस (आर्थोडॉन्टिक्स) के अंतर्गत ओहियो स्टेट यूनिवर्सिटी, ओहियो, अमेरिका द्वारा प्रदत्त दंत चिकित्सा डिग्री को मान्यता देने के संबंध में दंत चिकित्सा अधिनियम, 1948 (1948 का 16) की अनुसूची के भाग-III के क्रम सं. 88 के कॉलम 3 में की गई मौजूदा प्रविष्टियों में निम्नलिखित आशोधन/प्रतिस्थापन किया जाता है:

“एम.एससी. (ओर्थोडॉन्टिक्स), ओहियो स्टेट यूनिवर्सिटी, ओहियो, अमेरिका” शब्दों को “एम.एस (ओर्थोडॉन्टिक्स), ओडियो स्टेट यूनिवर्सिटी, ओडियो, अमेरिका” पढ़ा जाए।

2. दिनांक 23 अगस्त, 2005 की अधिसूचना की अन्य विषय-वस्तु अपरिवर्तित रहेगी।

[सं. वी.-12025/1/2015-डीई]

सुधीर कुमार, अवर सचिव

**MINISTRY OF HEALTH AND FAMILY WELFARE**

**(Department of Health and Family Welfare)**

**CORIGENDUM**

New Delhi, the 15th January, 2015

**S.O. 180.**—In partial modification of this Ministry's Notification No. V-12018/1/2004-PMS dated 23rd August, 2005, the entries made in the existing entries of column 3 of Serial No. 88, in Part-III of the Schedule to the Dentists Act, 1948 (16 of 1948) pertaining to recognition of dental degree awarded by Ohio State University, Ohio, USA under the speciality M. S. (Orthodontics), the following modification/substitution shall be made as under;

The words "M. Sc. (Orthodontics), Ohio State University, Ohio, USA" may be read as "M. S. (Orthodontics), Ohio State University, Ohio, USA".

2. The other content of the Notification dated 23rd August, 2005 shall remain unchanged.

[No. V-12025/1/2015-DE]

SUDHIR KUMAR, Under Secy.

**आयुष मंत्रालय**

नई दिल्ली, 15 जनवरी, 2015

**का.आ. 181.**—केन्द्रीय सरकार, राजभाषा (संघ के शासकीय प्रयोजनों के लिए प्रयोग) नियम 1976 (यथा संशोधित 1987) के नियम 10 के उप-नियम (4) के अनुसरण में, आयुष मंत्रालय के प्रशासनिक नियंत्रणाधीन निम्नलिखित कार्यालय, जिसके 80 प्रतिशत कर्मचारियों ने हिंदी का कार्यसाधक ज्ञान प्राप्त कर लिया है, को एतद्वारा अधिसूचित करती है :

2. “राष्ट्रीय आयुर्वेद औषधि विकास अनुसंधान संस्थान, भुवनेश्वर”

[सं. ई.-11018/1/2013-आयुष (रा.भा.)]

रामानन्द मीना, उप सचिव

**MINISTRY OF AYUSH**

New Delhi, the 15th January, 2015

**S.O. 181.**—In pursuance of Sub-Rule (4) of Rule 10 of the Official Language (Use for official purposes of the Union) Rules, 1976 (as amended in 1987), the Central Government hereby notifies the following office under the administrative control of the Ministry of AYUSH, where 80% staff have acquired the working knowledge of Hindi.

2. "National Research Institute of Ayurvedic Drug Development, Bhubaneswar"

[No. E.-11018/1/2013-AYUSH (O.L.)]

RAMANAND MEENA, Dy. Secy.

**( परमाणु ऊर्जा विभाग )**

मुंबई, 7 जनवरी, 2015

**का.आ. 182.**—केन्द्रीय सरकार, सरकारी परिसर (अप्राधि कृत अधिभोगियों की बेदखली) अधिनियम, 1971 (1971 का 40), की धारा 3 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए केन्द्रीय सरकार एतद्वारा निम्नलिखित सारणी के कालम (1) में उल्लेख किए गए अधिकारी, जो सरकार के राजपत्रित अधिकारी के स्तर के समतुल्य अधिकारी के रूप में हैं, को उक्त अधिनियम के तहत संपदा अधिकारी के रूप में नियुक्त करती है, जो निम्नलिखित सारणी के कॉलम (2) में विनिर्दिष्ट सरकारी परिसर के संबंधित अपने कार्यक्षेत्र की स्थानीय सीमा के भीतर उक्त अधिनियम के द्वारा अथवा इसके तहत संपदा अधिकारी को दी गयी प्रदत्त शक्तियों के द्यूटी का निर्वाह करेंगे--

सारणी		1	2
अधिकारी का पदनाम	सरकारी परिसर	Vemula Mandal, Kadappa District which are under the Andhra Pradesh-516349	adminstrative control at Tummalapalle Project.
1	2	[F.No.-10/8(16)/2014-PSU/308]	T. G. RAVEENDRAN, Under Secy.
श्री क्यू. ए. अली, प्रबंधक (प्रशासन), तुमलापल्ली खान, यूरेनियम कारपोरेशन ऑफ इंडिया लिमिटेड, एमएमडी कैंपस के पास, पोस्ट : मबुचीथलापल्ली, विमुला मंडल, कड्डपा जिला, आंध्रप्रदेश-516349	तुमलापल्ली आंध्रप्रदेश में यूरेनियम कारपोरेशन ऑफ इंडिया लिमिटेड से संबंधित अथवा पट्टे पर लिया गया परिसर जो तुमलापल्ली परियोजना के प्रशासनिक नियंत्रण में है।		

[फा. सं. 10/8(16)/2014-पीएसयू/308]

टी. जी. रवीन्द्रन, अवर सचिव

#### (DEPARTMENT OF ATOMIC ENERGY)

Mumbai, the 7th January, 2015

**S.O. 182.**—In exercise of the powers conferred by section 3 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 (40 of 1971), the Central Government hereby appoints the officer mentioned in column (1) of the Table given below, being an officer equivalent to the rank of a Gazetted Officer of the Government, to be Estate Officer for the purposes of the said Act, who shall exercise the powers conferred upon and perform the duties imposed on Estate Officer by or under the said Act, within the local limits of his jurisdiction in respect of the public premises specified in column (2) of the said Table.

#### TABLE

Designation of the officer	Public premises
1	2
Shri Q. A. Ali, Manager (Administration), Tummalapalle	Premises belonging to or taken on lease for the Mine, Uranium Corporation of India Limited, Near AMD Camp, Post : Mabbuchinthalapalle,
	Uranium Corporation of India Limited at Tummalapalle, Andhra Pradesh

#### संस्कृति मंत्रालय

नई दिल्ली, 20 जनवरी, 2015

**का.आ. 183.**—केन्द्र सरकार, राजभाषा (संघ के शासकीय प्रयोजनों के लिए प्रयोग) नियम, 1976 के नियम 10 के उप-नियम 4 के अनुसरण में संस्कृति मंत्रालय के अंतर्गत आने वाले कार्यालय सहायक अधीक्षण पुरातत्वविद, भारतीय पुरातत्व सर्वेक्षण, 1857 स्मृति संग्रहालय, बेली गार्ड कॉटेज, गोलागंज, रेजीडेंसी, लखनऊ को जिसमें 80 प्रतिशत से अधिक अधिकारियों/कर्मचारियों ने हिन्दी का कार्यासाधक ज्ञान प्राप्त कर लिया है, अधिसूचित करती है।

यह अधिसूचना राजपत्र में प्रकाशन की तारीख से प्रवृत्त होगी।

[फा. सं. ई.-13016/1/2011-हिंदी]

श्रेया गुहा, संयुक्त सचिव

#### MINISTRY OF CULTURE

New Delhi, the 20th January, 2015

**S.O. 183.**—In pursuance of Sub-rule (4) of Rule 10 of the Official Language (Use for official purposes of the Union) Rules, 1976, the Central Govt. hereby notifies the office of Assistant Superintending Archaeologist, Archaeological Survey of India, 1857 Smriti Sangrahalaya, Beli Guard Cottage, Golaganj, Residency, Lucknow under Ministry of Culture wherein more than 80% officers/staff have acquired working knowledge of Hindi.

This notification shall come into force from the date of publication in the Official Gazette.

[F. No. E.-13016/1/2011-Hindi]

SREYAGUHA, Jt. Secy.

**श्रम एवं रोजगार मंत्रालय**

नई दिल्ली, 20 जनवरी, 2015

**का.आ. 184.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बी. सी. सी. एल. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 1, धनबाद के पंचाट (संदर्भ संख्या 44/2008) को प्रकाशित करती है, जो केन्द्रीय सरकार को 20/01/2015 को प्राप्त हुआ था।**

[सं. एल-20012/75/2008-आईआर (सीएम-I)]

एम. के. सिंह, अनुभाग अधिकारी

**MINISTRY OF LABOUR AND EMPLOYMENT**

New Delhi, the 20th January, 2015

**S.O. 184.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 44/2008) of the Central Government Industrial Tribunal-cum-Labour Court No. 1, Dhanbad as shown in the Annexure, in the Industrial dispute between the management of M/s. BCCL, and their workmen, received by the Central Government on 20/01/2015.

[No. L-20012/75/2008-IR(CM-I)]

M. K. SINGH, Section Officer

**ANNEXURE**

**BEFORE THE CENTRAL GOVERNMENT  
INDUSTRIAL TRIBUNAL NO.1,  
DHANBAD**

In the matter of reference U/S 10(1) (d) (2A) of  
I.D.Act, 1947

**Reference No. 44 of 2008**

Employer in relation to the management of  
E.J. Area of M/s. BCCL

AND

Their workman

**Present :** Sri R. K. SARAN, Presiding Officer.

**Appearances:**

For the Employers : Sri Nitish Sahay, Advocate

For the Workman : Sri S.C.Gour, Advocate.

State : Jharkhand Industry : Coal

Dated 21/11/2014

**AWARD**

By order No.-L20012/75/2008-IR (CM-I), dated 24/09/2008 the Central Govt. in the Ministry of Labour has, in

exercise of powers conferred by clause (d) of Sub –Section (1) and Sub-Section (2A) of Section 10 of the Industrial Disputes Act.1947, referred the following disputes for adjudication to this Tribunal:

**SCHEDULE**

“(i) Whether the action of the management of Bhowra (N) Colliery M/s. BCCL in dismissing the service of Late Banshidhar Mahakuru , S. F. Mazdoor w.e.f. 18.11.2003 is justified and legal? (ii) Whether the demand of the United Coal workers Union from the management of Bhowra (N) Colliery of M/s. BCCL for providing dependent employment to the defendant of Late Shri Banshidhar Mahakuru S. F. Mazdoor is justified and legal? (iii) To what relief is the concerned workman’s wife/family entitled?”

2. The case is received from the Ministry of Labour on 10.10.2008. After receipt of reference, both parties are noticed, the workman files their written statement on 09.02.2011. After long delay the management also files written statement-cum-rejoinder on 27.03.2014. The workman adduce one witness. But the management neither adduce any witness nor marked any document.

3. The Short point to be decided in this reference is whether the dismissal of the workman is justified or not.

4. The dismissal of the workman is for absenteeism . Mostly it is seen the workman worked 71 days in the year 2000, 29 days in the year 2001 and 13 days in the year 2002.

5. The workman died on 2/12/2003 in BCCL hospital, as per the death certificate filed by the workman. The workman was also ill and was treated in BCCL hospital from 18.04.2002 and again 7.10.2003 to 11.10.2003.

6. This being the situation, his dismissal on 18.11.2003 is totally unjustified.

7. Considering the facts and circumstances of this case, I hold that the action of the management of Bhowra (N) Colliery M/s. BCCL in dismissing the service of Late Banshidhar Mahakuru , S.F. Mazdoor w.e.f. 18.11.2003 is not justified, Hence the applicant’s widow be given monetary compensation in lieu of compassionate appointment to which the widow of the workman agreed. The reference answered accordingly.

This is my award.

R. K. SARAN, Presiding Officer

नई दिल्ली, 20 जनवरी, 2015

**का.आ. 185.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार कुवेत एअरवेज कार्पोरेशन के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 2, मुम्बई के पंचाट (संदर्भ संख्या**

50/2013) को प्रकाशित करती है, जो केन्द्रीय सरकार को 20/01/2015 को प्राप्त हुआ था।

[सं. एल-11012/21/2013-आईआर (सीएम-I)]

एम. के. सिंह, अनुभाग अधिकारी

New Delhi, the 20th January, 2015

**S.O. 185.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 50/2013) of the Central Government Industrial Tribunal-cum-Labour Court No. 2, Mumbai as shown in the Annexure in the Industrial dispute between the management of the M/s. Kuwait Airways Corporation, and their workmen, received by the Central Government on 20/01/2015.

[No. L-11012/21/2013-IR(CM-I)]

M. K. SINGH, Section Officer

#### ANNEXURE

#### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO.2, MUMBAI

**Present :** K. B. KATAKE, Presiding Officer

REFERENCE NO. CGIT-2/50 of 2013

EMPLOYERS IN RELATION TO THE  
MANAGEMENT OF KUWAIT  
AIRWAYS CORPORATION

The Sales Manager -Pax  
Kuwait Airways Corporation  
902, Nariman Bhawan,  
9<sup>th</sup> floor Nariman Point  
Mumbai-400 021.

AND

THEIR WORKMEN.

The President  
Kuwait Airways Staff and Officers' Association  
3/65, Nityanand Nagar-IV  
Near Railway Station Andheri (E)  
Mumbai-400 069.

#### APPEARANCES:

FOR THE EMPLOYER : No appearance.

FOR THE WORKMEN : No appearance.

Mumbai, the 4<sup>th</sup> December, 2014

#### AWARD

The Government of India, Ministry of Labour & Employment by its Order No.L-11012/21/2013-IR (CM-I), dated 29.08.2013 in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2 (A) of

Section 10 of the Industrial Disputes Act, 1947 have referred the following industrial dispute to this Tribunal for adjudication:

“Whether the Kuwait Airways Staff and Officers' Association, Mumbai proves that Sh. Sajid F. Kolsawala, Senior Accounts Officer is a workman as defined under Section 2 (s) of the Industrial Disputes Act 1947? If so, whether the action of management of Kuwait Airways Corporation, Mumbai in transferring of Shri Sajid F. Kolsawala, Senior Accounts Officer vide order dated 8/2/2013 from Mumbai to Cochin is legal and justified? To what relief Shri Sajid F. Kolsawala is entitled to?”

2. After receipt of the reference from Ministry of Labour & Employment, notices were sent to both the parties. In response to the notice, Shri Iqbal Siddiqui, Representative of the union attended this Tribunal and requested for adjournment. Thereafter on several dates, matter was adjourned for filing of Statement of Claim by Union. Since second party did not file their statement of claim, fresh notice was issued to second party vide Ex-5. Same was received back from postal authorities with endorsement “Unclaimed”. Today both parties were absent. The second party union failed to file statement of claim. Since there is no statement of claim on record, therefore, this reference cannot be decided on merits and the same deserves to be rejected for want of prosecution. Thus I proceed to pass the following order :

#### ORDER

Reference stands rejected for want of prosecution.

Date : 04.12.2014

K. B. KATAKE, Presiding Officer

नई दिल्ली, 20 जनवरी, 2015

**का.आ. 186.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बी. सी. सी. एल. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 2, धनबाद के पंचाट (संदर्भ संख्या 17/2008) को प्रकाशित करती है, जो केन्द्रीय सरकार को 20/01/2015 को प्राप्त हुआ था।

[सं. एल-20012/144/2007-आईआर (सीएम-I)]

एम. के. सिंह, अनुभाग अधिकारी

New Delhi, the 20th January, 2015

**S.O. 186.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 17/2008) of the Central Government Industrial Tribunal-cum-Labour Court No. 2, Dhanbad as shown in the Annexure

in the Industrial dispute between the management of M/s. BCCL, and their workmen, received by the Central Government on 20/01/2015.

[No. L-20012/144/2007-IR(CM-I)]

M. K. SINGH, Section Officer

## **ANNEXURE**

**BEFORE THE CENTRAL GOVERNMENT  
INDUSTRIAL TRIBUNAL (NO. 2),  
AT DHANBAD**

**PRESENT :** SHRI KISHORI RAM, Presiding Officer

In the matter of an Industrial Dispute under  
Section 10(1)(d) of the I.D. Act, 1947

## **REFERENCE NO. 17 OF 2008**

## PARTIES:

The Vice President  
Janta Mazdoo Sangh,  
Vihar Building, Jharia, Dhanbad

Vs.

General Manager,  
Kusunda Area of M/s. BCCL,  
PO : Kusunda, Distt. Dhanbad.

Ministry's Order No. L-20012/144/07-IR(CM-I) dt.25.02.2008

## APPEARANCES :

On behalf of the workman/ : Mr. Pintu Mandal, Ld.  
Union Union Representative.

On behalf of the : Mr. U. N. Lal, Ld. Adv.  
Management

**State : Jharkhand**      **Industry : Coal**

Dhanbad, the 30th Dec., 2014

## **AWARD**

The Government of India, Ministry of Labour, in exercise of the powers conferred on them under Sec.10(1) (d) of the I.D. Act., 1947 has referred the following dispute to this Tribunal for adjudication vide their Order No. L-20012/144/07-IR(CM-I) dt.25.02.2008.

## SCHEDULE

“Whether the action of the Management of Khas Kusunda Colliery of M/s. BCCL in dismissing Sh.Shiv Dayal B.P., M/Loader from the services of the Company w.e.f. 24.02.1997 is legal and justified ? If not, to what relief is the concerned workman entitled?”

On receipt of the Order No. L-20012/144/07-IR (CM-I) dt.25.02.2008 of the above mentioned reference from the Government of India, Ministry of Labour & Employment,

New Delhi for adjudication of the dispute, the Reference Case No.17 of 2008 was registered on 10.03.2008 and accordingly an order to that effect was passed to issue notices through the Registered Posts to the parties concerned, directing them to appear in the Court on the date fixed, and to file their written statements along with the relevant documents. In pursuance of the said order, notices by the Registered Posts were sent to the parties concerned.

Both the parties made their appearances and filed their pleadings and photocopies of their documents. The Union and the O.P./Management through their own respective Representative/ Ld.Counsel appeared in, and contested the case.

2. The case of the sponsoring Janta Mazdoor Sangh, for workman Shiv Dayal B.P is that he was a permanent M/Loader of Khas Kusunda colliery. He was issued the baseless and false chargesheet dtt; 14/16.06.94 devoid of precise nature of misconduct for unauthorized absentism since 6/12/92. He had submitted his plausible reply with all materials about his absence. The domestic inquiry into the charge was conducted without any factual basis. The management had failed to prove the charge levelled against him. The enquiry officer submitted his enquiry report baseless. Accordingly, the workman was dismissed from his service of M/s. BCCL with immediate effect as per the order dtt. 19/24-02-97, though the chargesheet of the misconduct was not legally maintainable. As a matter of fact, on receipt of sudden information on 05/12/92 about his mother's seriously illness at his native place, the workman rushed there to look after her, so he could not inform of it to the office.

After a week, the workman returned back, to report for his duty, he was not allowed to resume his duty on account of his absence. He was newly appointed in his service on compassionate ground , unaware of the Rules and Regulations of the Company. Despite several times representations to the Management, when it was unconsidered for resumption of his duty, finally the Industrial dispute raised by the Union before the ALC ©,Dhanbad, due to the failure in its conciliation on 14.11.2007, resulted in the reference for an adjudication. The action of the Management in dismissing the workman is not justified.

The Union Representation for the workman in his rejoinder has specifically denied the allegations of the OP/Management, further stated that the Disciplinary Authority without application of his mind in scrutiny of the materials on the record has wrongly and illegally imposed on the workman the punishment of his dismissal, as the workman had never admitted his guilt for absence.

3. Whereas the case of the OP/Management is that upon the chargesheet of the workman for a misconduct

of his unauthorized absence from duty under clause 26.1.1. of the Certified Standing Orders of the Company, the Disciplinary Authority in order to get enquired into the matter appointed the Enquiry Officer and the Management Representative. The notices of the enquiry were issued to the workman and all the concerned. The enquiry was fairly held in presence of the workman who also had given his statement on 18.5.1996. The Enquiry Officer submitted his enquiry report based on the evidences of both parties, holding the workman guilty of the charge levelled against him. The workman was fully given the opportunity for his defence on the basis of the principle of the natural justice. There was no complaint against the enquiry. A copy of the enquiry report with 2<sup>nd</sup> Show Cause Notice was sent to the workman as per the letter dt.5.12.96. The workman also replied to it on 11.12.1996. The Disciplinary Authority applied his mind to the proceeding of the enquiry and the enquiry report, and justly awarded the workman with the punishment of his dismissal from the service as per the order No.286 dt.19/24.2.1997. In view of the aforesaid facts of the proceeding, it is alleged that the workman had admitted his guilt of his absentism. The final approval of the General Manager, Kusunda Area, clearly manifested the absence of the workman for more than 4 (four) years. So the punishment of dismissal to the workman is just, fair and quite reasonable in view of the gravity of his misconduct.

Simultaneously the OP/management in their rejoinder has categorically denied all the allegations of the Union/ workman as incorrect, further stating that no cogent reason was justified by the workman for his aforesaid long absence. The order of dismissal towards the workman was quite reasonable with a view to maintain the discipline in the Industry. After dismissal, the workman had never preferred an Representation/Appeal before the Appellate Authority. Thus, the action of the Management seeing the gravity of the misconducts is quite justified.

#### FINDING WITH REASONS

4. In the instant reference, while the proceeding was at the preliminary point as to the fairness of the domestic enquiry, the Union Representative for the workman filed the petition dt.24.12.2013 that the workman had accepted the fairness of the enquiry; accordingly the Tribunal as per the Order No.26 dt.5.2.2014 held the domestic enquiry fair, proper and in accordance with the principles of natural justice. It resulted in hearing the arguments of both the parties on merits.

According to the Union representative Pinto Mandal, the charge of absentism devoid of precise nature of misconduct is not legally maintainable, nor proved, and that the Project Officer is not the Disciplinary authority to pass an order of the dismissal towards the workman, as per the Certified Orders of the Company, because the workman was appointed as M/Loader by the letter dt.24.4.1981 of the General Manager, Kusunda Area, the

photocopies of his I.D. Card and Service Excerpt (Extt.W.1 to 3 respectively). In view of that, the dismissal of the workman is legally bad and unjustified.

In response to it, Mr.U.N.Lal, Learned Counsel for the O.P./Management, has contended that workman Shiv Dayal B.P. in the enquiry had accepted his guilty for his unauthorized absence from duty, and on the second Show Cause Notice dt.5.12.96 (Extt.6), the reply to it (Extt.M.7) was given by the workman, but in view of grave nature of his misconduct of absentism, the Disciplinary Authority had imposed on him the punishment of dismissal which is just, and reasonable, so the workman is not entitled to any relief.

5. On perusal and consideration of the materials, available on the Case record, there is no doubt that the workman was a permanent M/Loader since 08.07.1981, the date of his Appointment, and he appears to have been in the continuous service of the Company's aforesaid colliery till the charge sheet was issued to him on 06.02.1995. The order of dismissal all of a sudden as a punishment to the illiterate workman for his absentism from June, 1992 appears to highly shocking and disproportionate to the nature of the said misconduct in the instant case. Hence the dismissal order of the OP/management dt.19/24.2.1997 towards the workman is set aside. The workman is entitled to a relief under the provision of Sec. 11 A of the Industrial Dispute Act, 1947.

In result, it is hereby awarded that the action of the Management of Khas Kusunda Colliery of M/s BCCL in dismissing Shri Shiv Dayal B.P., M/Loader from the services of the company w.e.f. 24.2.1997 is not legal and justified. Therefore, the workman concerned is entitled to his accordingly reinstatement in the services of the Company, but without back wages. The OP/Management is directed to implement the order within a month from the receipt of it, following its publication in the Gazette of India.

KISHORI RAM, Presiding Officer

नई दिल्ली, 20 जनवरी, 2015

**का.आ. 187.—**ओद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बी. सी. सी. एल. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट ओद्योगिक विवाद में केन्द्रीय सरकार ओद्योगिक अधिकरण/श्रम न्यायालय नं. 2, धनबाद के पंचाट (संदर्भ संख्या 78/2005) को प्रकाशित करती है, जो केन्द्रीय सरकार को 20/01/2015 को प्राप्त हुआ था।

[सं. एल-20012/36/2005-आईआर (सीएम-I)]

एम. के. सिंह, अनुभाग अधिकारी

New Delhi, the 20th January, 2015

**S.O. 187.—**In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central

Government hereby publishes the Award (Ref. No. 78/2005) of the Central Government Industrial Tribunal-cum-Labour Court No. 2, Dhanbad as shown in the Annexure in the Industrial dispute between the management of the M/s. BCCL, and their workmen, received by the Central Government on 20/01/2015.

[No. L-20012/36/2005-IR(CM-I)]

M. K. SINGH, Section Officer

### ANNEXURE

#### **BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO.2), AT DHANBAD**

**PRESENT :** SHRI KISHORI RAM, Presiding Officer

In the matter of an Industrial Dispute under  
Section 10(1)(d) of the I.D.Act.,1947

#### **REFERENCE NO. 78 OF 2005**

#### **PARTIES :**

The Exec. Member,  
Bihar Colliery Kamgar Union ,  
Block -E,C.11, Bhuli Qr. No. 483,PO:Bhuli D Block,  
Distt : Dhanbad

Vs.

Project Officer,  
Barree Colliery of M/s BCCL,  
P : Bhulan Baaree, Dhanbad.

Ministry's Order No L-20012/36/2005-IR(C-I) dt.26.7.2005

#### **APPEARANCES :**

On behalf of the workman/ : Mr. A. K. Sharma Ld.  
Union Adv.

On behalf of the : Mr. D. K. Verma,  
Management Ld. Adv.

State : Jharkhand Industry : Coal

Dated, Dhanbad, the 29<sup>th</sup> Dec., 2014

#### **AWARD**

The Government of India, Ministry of Labour, in exercise of the powers conferred on them under Sec.10(1)(d) of the I.D. Act., 1947 has referred the following dispute to this Tribunal for adjudication vide their Order No. L-20012/36/2005-IR(C-I) dt. 26.7.2005

#### **SCHEDULE**

“Whether the action of the Management of Bararee Colliery of M/s BCCL in dismissing Sri Ratu be read as Rathu Mahato, Loader w.e.f. 14.2.1997 is justified? If not, to what relief is the workman concerned entitled.”

On receipt of the Order No. L-20012/36/2005-IR(C-I) dt.26.7.2005 of the above mentioned reference from the Government of India, Ministry of Labour & Employment, New Delhi for adjudication of the dispute, the Reference Case No.78 of 2005 was registered on 19.08.2005 and accordingly an order to that effect was passed to issue notices through the Registered Posts to the parties concerned, directing them to appear in the Court on the date fixed, and to file their written statements along with the relevant documents. In pursuance of the said order, notices by the Registered Posts were sent to the parties concerned.

Both the parties made their appearances and filed their pleadings and photocopies of their documents. The Union and the O.P./Management through their own respective Ld.Counsels appeared in, and contested the case.

2. The case of sponsoring Bihar Colliery Kamgar Union for workman Ratu be read as Rathu Mahato is that he was the permanent employee as the Loader of Bararee Colliery of M/s BCCL, Distt; Dhanbad. He was very sincere, punctual and devoted to his duty. But he could not attend and perform his duty w.e.f. 19.2.1996, so he was issued charge- sheet dt.12.9.1996 for his unauthorized absence for 18<sup>th</sup> Feb., to 3<sup>rd</sup> Sept,1996. The workman had replied to it that he had been suffering from mental illness (Depression),so it was impossible for him to perform his duty. Being dissatisfied with the reply of the workman, the Project officer of the Colliery set up an enquiry into it, by appointing Sr.Personnel Officer, T.S.C. Rao and Sri B. Prasad as the Enquiry Officer and the Management's Representative respectively. On receipt of the enquiry notice, the workman appeared in the enquiry; the enquiry was not properly and fairly conducted in accordance with the law and rules of the Company. It is alleged that the Enquiry Officer instructed the workman to plead guilty of it so that he might be appointed and allowed to resume his duty. As such the domestic enquiry was unfair. The workman had by the post dt.10.9.996 informed the management of his mental illness as a cause of his absence from the duty. But the Management did not accept it, and dismissed him wrongly. The workman had though appeared in the enquiry, neither knowledge of it or of his any co-worker,when he knew of his co-worker who might give evidence in support of his case, for which the workman prayed for time, he was not allowed to produce his witness, nor any other co-worker for it.Despite the pleading of his quilt under the inducement of the Management for providing him the employment, he was not employed. The workman is illiterate so he unthought of the legal proceeding and the result of his forceful confession. He had produced the Medical Certificate dt.28.8.1986 of his medical treatment and fitness for the duty. But it was disbelief by the Management. Even the representation of the Union to the Management in respect of the starvation situation of his

entire family and his treatment at the Ranchi Medical Hospital was not sympathetically considered by the Management. Hence the industrial dispute has been referred by the Government of India, New Delhi for an adjudication. The action of the Management in dismissing the workman is illegal and unjustified.

No rejoinder whatsoever filed on behalf of the Union Representative for the workman.

3. Whereas challenging the maintainability of the reference, the case of the OP/Management is that since the dismissal of the workman on 14.02.1997, he had never raised any Industrial Dispute till 7.6.2004. But after a lapse of eight years, the Union raised the stale dispute without any justification. Although no time limit is fixed, it confers no right on him to raise the dispute at any point of time. The inordinate delay without any justification for the delay was not liable to be condoned. The workman was not regular in his service since his appointment on 5.10.1986. He began to unauthorisedly absent from his duty which amounted to an misconduct as per the C.O. No. 26.1.1 of the Certified Standing Order of the Company. So he was issued the charge-sheet dt. 12.9.1996 for it. The reply of the workman to it was found unsatisfactory. Hence, the enquiry into it was set up by the Management, by appointing Sri T.S.C. Rao, Sr. P.O. as the Enquiry Officer for conducting it. On notice of the enquiry, the workman also appeared in it wherein the Enquiry Officer fairly conducted the domestic enquiry in presence of the workman giving full opportunity for his defence in accordance with the principles of the natural justice. The Enquiry officer submitted his enquiry report, holding the workman guilty of the charge levelled against him. Thereafter, the copy of the enquiry report was supplied by the Disciplinary Authority to the workman for his explanation. His previous record of attendances was 169, 103 and 53 days in the last three years 1993 to 1995 respectively. The uninterestedness of the workman from his such previous attendances stood established. Considering the enquiry report and the past record of the workman, the workman was dismissed from the service which is legal and justified. He is not entitled to any relief. It has been prayed for permission to adduce afresh evidence to prove the charge, in case the enquiry is found unfair at the preliminary issue.

Moreover, the OP/Management in their simultaneous rejoinder has categorically denied at the allegations the workman.

4. In the instant case, after due consideration of the statement of MWI T.S.G.Rao on the preliminary point, at which no evidence of the workman could be produced, the Tribunal as per the order No. 30 dt. 22.5.2013 held the domestic enquiry quite fair, proper and in accordance to the principles of natural justice. Thereafter, it has come for hearing the final arguments of both the parties on merits. Despite giving ample opportunity, when the Union

Representative did not appear for his final argument on merits, it was reserved for an award.

Having considered the materials as produced by the OP/Management on the case record, I find no dispute that the workman was a permanent Loader at the Bararee Colliery of M/s BCCL since his appointment from 05.10.1986. There is no dispute in the case that the workman had not faced such enquiry for his previous any misconduct for such unauthorized absenteeism. The workman in his statement before the Enquiry Officer vividly appears to have straight forward justified his inevitable situation of his mental illness owing to which he was too incapable to attend his duty on time. The enquiry proceeding nowhere expressly or impliedly reveals the alleged confession of the workman about his absenteeism, on the appraisal of all the facts of both the parties under Sec. 11 A of the Industrial Dispute Act, 1947, I find that the dismissal of the permanent workman for his single absenteeism during the entire tenure of his service is not only shocking but also quite disproportionate to the nature of his misconduct of absenteeism. Hence the dismissal of the workman is liable to be set aside.

In result, it is hereby awarded that the action of the Management of Bararee Colliery of M/s BCCL in dismissing Sri Ratu be read as Rathu Mahato, Loader w.e.f. 14.02.1997 is quite unjustified in the eye of law and facts as well. Hence, the workman is entitled to reinstatement in his service accordingly, but without any back wages.

The OP/Management is directed to implement the order within one month from the receipt of it following its publication in the Gazette of India.

KISHORI RAM, Presiding Officer

नई दिल्ली, 20 जनवरी, 2015

**का.आ. 188.—**ओद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बी. सी. सी. एल. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट ओद्योगिक विवाद में केन्द्रीय सरकार ओद्योगिक अधिकरण/श्रम न्यायालय नं. 2, धनबाद के पंचाट (संदर्भ संख्या 138/2001) को प्रकाशित करती है, जो केन्द्रीय सरकार को 20/01/2015 को प्राप्त हुआ था।

[सं. एल-20012/56/2001-आईआर (सी-1)]

एम. के. सिंह, अनुभाग अधिकारी

New Delhi, the 20th January, 2015

**S.O. 188.—**In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 138/2001) of the Central Government Industrial Tribunal-cum-Labour Court No. 2, Dhanbad as shown in the Annexure in the Industrial dispute between the management of

the M/s. BCCL, and their workmen, received by the Central Government on 20/01/2015.

[No. L-20012/56/2001-IR(C-I)]

M. K. SINGH, Section Officer

#### ANNEXURE

#### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO.2), AT DHANBAD

**PRESENT :** Shri KISHORI RAM, Presiding Officer

In the matter of an Industrial Dispute under Section 10(1)(d) of the I.D.Act.,1947.

#### REFERENCE NO. 138 OF 2001.

#### PARTIES :

The Organizing Secretary,  
Rashtriya Colliery Mazdoor Sangh,  
Rajendra Path, Dhanbad

#### Vs.

General Manager,  
Western Washery Zone of M/s. BCCL,  
PO: Moonidih, Dhanbad.

Ministry's Order No L-20012/56/2001(C-I) dt. 30.04.2001

#### APPEARANCES :

On behalf of the workman/: Mr. D. Mukherjee, Ld.  
Union Advocate.

On behalf of the : Mr. D. K. Verma Ld.  
Management Advocate.

State : Jharkhand Industry : Coal

Dated, Dhanbad, the 31st Dec., 2014

#### AWARD

The Government of India, Ministry of Labour, in exercise of the powers conferred on them under Sec.10(1) (d) of the I.D. Act, 1947 has referred the following dispute to this Tribunal for adjudication vide their Order No. L-20012/56/2001(C-I) dt. 30.04.2001.

#### SCHEDULE

“Whether the action of the Management of M/s. BCCL in demoting S/Sh. N. N. Pandey, Hazrat Ali Ansari and S.K. Bhattacharjee from their previous grades is justified and proportionate to the offence, if any, committed by them? If not, to what reliefs are the workmen concerned entitled?”

On receipt of the Order No. L-20012/56/2001(C-I) dt. 30.04.2001 the above mentioned reference from the Government of India, Ministry of Labour & Employment, New Delhi for adjudication of the dispute, the Reference

Case No.138 of 2001 was registered on 01.06.2001. and accordingly an order to that effect was passed to issue notices through the Registered Posts to the parties concerned, directing them to appear in the Court on the date fixed, and to file their written statements along with the relevant documents. In pursuance of the said order, notices by the Registered Posts were sent to the parties concerned.

Both the parties made their appearances and filed their pleadings and photocopies of their documents. The Union and the O.P./Management through their own respective Ld.Counsels appeared in, and contested the case.

2. The case of thee workmen N.N.Pandey, Hazrat Ali Ansari and S.K.Bhattacharjee as sponsored by the Union concerned is that Hazrat Ali Ansari as Clerical Grade I and rest aforesaid both workmen as Clerical Grade II have been unblemishedly working since long. The local Management was biased against the workmen for their Union activities about the grievances of other co-workers, so they were malafide unauthorisedly issued by the Project Officer a false and frivolous charge sheet dt.18/21.6.97 for allegedly marking attendance of an allegedly dead workman. Though the workman had replied to the charge explicitly explaining enough, the anti labour Management /the Project officer appointed the biased Enquiry Officer, who against the principles of natural justice illegally conducted the enquiry without giving them full opportunity for their due defence. The finding of the Enquiry Officer was perverse and the charge was not proved against the workman. Even the Management as per the Order dt.18/20.5.1998 inflicted upon them the punishment of their demotion from clerical Grade II to III which was ipso facto illegal and void ab initio. The workmen were not supplied the enquiry report and proceedings prior to the imposition of their punishment They had represented before the Management, but ineffective result. At last the Union raised the Industrial Dispute before the ALC(C), Dhanbad, but the failure in its conciliation due to adamant attitude of the Management resulted in the reference for an adjudication, so the action of the Management for the demotion of the workmen inproportion to their alleged offence is unjustified and illegal as well as vindictive and anti labour. The workmen are entitled to the respective original Grades with wage arrears and other consequential benefits.

In the rejoinder on behalf of the workmen, all the allegations of the OP/Management have been specifically denied.

3. Whereas challenging the maintainability of the Industrial Dispute, the case of the OP/Management is that all the three wokmen, the permanent employees of Mahuda Coal Washery, had been working as the Attendance Clerks. But they had falsely marked the attendances of Late Ram Pujan Bhuria for 5 days in the

month of Nov., 1996 to April, 1997, though Late Ram Pujan Bhua had expired on 24.10.1996. The acts of the workmen were their misconduct, for which they were issued a chargesheet dt. 21.6.1997. They replied to the charge, denying the allegation levelled against them. On the appointment of the Enquiry Officer by the Management for conducting a domestic enquiry into the charge against workmen, the Enquiry Officer conducted the domestic enquiry into it in the presence of the workmen, giving them full opportunity for defence. The domestic enquiry was held fair, proper and in accordance with the principles of natural justice, and submitted his enquiry report holding them guilty of the charge. After considering the enquiry report and the enquiry proceeding, the Disciplinary Authority leniently passed the order of their demotion from Clerk Grade II to III as a punishment. The action/order of the Management in demoting the workmen to Clerk Grade III is legal and justified.

The OP/Management in their simultaneous rejoinder has categorically denied all the allegations of the Union/workmen as false, further stating that the Project Officer is a competent person to issue the chargesheet, and marking attendances for a dead person by the workmen is a serious misconduct.

4. In the instant reference, on examination of MW-I A. K. Sethi and WWI Nityanand Pandey at preliminary issue, the Tribunal as per Order No.47 dt.30.12.2013 has held the domestic enquiry as fair and according to the rule of natural justice. Hence, it came up for hearing the final arguments of both the parties on merits.

Mr. D. Mukherjee, Learned Senior Counsel for the Union/workmen has submitted that out of three workmen, only Sri N.N.Pandey has contested the case by stating his unrebutted statement that he had not marked the attendances on 26.11.1996 and 01.04.97 for which no wages were paid to Ram Pujan Bhua, so the punishment of demotion to Mr.Pandey was highly major for no fault proved. Mr.Mukherjee has, relying upon the ruling : 1989 LAB.I.C. 1043 = AIR 1989 SC 149 Scooter India Ltd., Lucknow Vs. Labour Court, wherein held ,as submitted that 'in the case of termination of service, the Disciplinary Authority found to be fair and lawful and its findings were not vitiated in any matter. That by itself would not be ground for non interference with order of termination of service by Labour Court, the direction by Labour Court for reinstatement of employee with 75 % back wages on the ground of reformation to the erring workman should be given opportunity to reform and prove to be loyal and disciplined employee of the Company'.(Para 1.2.7.)

Whereas Mr.D.K.Verma, Ld.Advocate for the O.P./Management has contended that no other two workmen S/Shri Hazrat Ali Ansari and S.K.Bhattacharjee than the sole instant workman N.N.Pandey have contested the case, so presumably aforesaid uncontesting aforesaid two

workmen accepted their faults. All the three workmen were charge sheeted for their misconduct of making false attendances of deceased other employee Ram Pujan Bhua for a few specified days in the year 1996 and 1997 for which after due enquiry, they were found guilty of it, so on the consideration of the Enquiry Report and other relevant matters, the Disciplinary Authority awarded the workmen with punishment of their demotion for the proved charges which was quite just. Mr. Verma raised another point that since it is not a case of dismissal under Sec.11 A of the I.D. Act, the Tribunal has no power to modify the punishment of demotion in the case.

5. On perusal and consideration of the materials available on the case record, after hearing of the arguments of both learned Counsels on merits, there seems no dispute that due to the negligence of workmen concerned following the very failure of the Authority concerned to delete the name of Late Ram Pujan Bhua from the wages sheets, the attendances of the deceased workmen were marked for a few days in the month of 11<sup>th</sup> Dec. 1996 to 10<sup>th</sup> Jan, 1997, for which period though the bill was cancelled, the issuance premium of Rs.411.80 was credited to the deceased workmen resulting in the financial loss of the Management. Where there is admitted the negligence of the Authority concerned to delete the name of the deceased workman concerned from the wage sheets, there no charge of dishonesty in connection with the Company's business can not be attributed to the negligence of the instant workmen N.N.Pandey and two other ones Hazrat Ali Ansari and S.K.Bhattacharjee similarly situated workmen, nor such charge appears to be proved against the workmen in view of their similar cases together. No misappropriation of any single farthing by any of the workmen appears from the materials on the case record, nor does such question warrant the nature of the misconduct alleged.

In the instant reference, in lack of the proof of the charges under clause 26.1.11 and 26.1.13 of the Certified Standing Orders of the M/s. BCCL, the punishment of demotions to workmen S/Sh. N.N. Pandey, and two other similarly situated ones Hazrat Ali Ansari and S.K. Bhattacharjee from the post of Clerk Gr. II, I and II to their Grades III, II and III respectively with immediate effect for these appear to be quite unjustified and disproportionate to the alleged offences. The punishments to the workmen seem to be highly vindictive. Therefore, it is liable to set aside under Sec.11 (1) of the Industrial Dispute Act, 1947.

In such circumstances, these workmen are entitled to their reliefs of their restoration to the original Clerical Grades II, I and II respectively with all the financial benefits with effect from their demotions concerned.

KISHORI RAM, Presiding Officer

नई दिल्ली, 22 जनवरी, 2015

**का.आ. 189.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार दिल्ली नगर निगम के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय नं.-1, दिल्ली के पंचाट (संदर्भ संख्या 164/2012) को प्रकाशित करती है, जो केन्द्रीय सरकार को 21/01/2015 को प्राप्त हुआ था।

[सं. एल-42012/36/2012-आईआर (डीयू)]

पी. के. वेणुगोपाल, डेस्क अधिकारी

New Delhi, the 22nd January, 2015

**S.O. 189.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. 164/2012) of the Central Government Industrial Tribunal-cum-Labour Court No.-1, Delhi as shown in the Annexure in the Industrial Dispute between the management of the Municipal Corporation of Delhi, and their workmen, received by the Central Government on 21/01/2015.

[No. L-42012/36/2012-IR(DU)]

P. K. VENUGOPAL, Desk Officer

## **ANNEXURE**

**IN THE COURT OF SHRI AVTAR CHAND DOGRA,  
PRESIDING OFFICER, CENTRAL GOVERNMENT  
INDUSTRIAL TRIBUNAL-CUM-LABOUR  
COURT NO.1, KARKARDOOMA  
COURT COMPLEX, DELHI**

ID No.164/2012

Shri Sanjeev Kumar,  
S/o Late Shri Roop Chand,  
Through Nagar Nigam Karamchari Sangh,  
Delhi Pradesh,  
P-2/624, Sultanpuri Delhi ...Workman

VERSUS

The Commissioner,  
Municipal Corporation of Delhi  
Town Hall, Chandni Chowk, Delhi ...Management

## **AWARD**

A reference was received by this Tribunal under section 10(2)(a) read with clause 1(d) of the Industrial Disputes Act, 1947 from the appropriate Government to answer the following:

"Whether the action of the management of Municipal Corporation of Delhi (MCD) in denying the 'Compassionate Appointment' to Shri Sanjeev Kumar, S/o Late Shri Roop Chand in place of his

deceased mother, Smt. Parbati, W/o Late Shri Roop Chand, ex-Safai Karamchari is justified or not? If not, what relief the workman is entitled to and from which date?

2. It transpires from the record that Smt. Parwati, widow of Shri Roop Chand, safai karamchari had expired on 238.03.2008 and after a period of about six years, here son, i.e Shri Sanjeev Kumar, herein above, approached the management for seeking employment on compassionate grounds.

3. After receipt of the above reference from the appropriate Government, notices were sent to Shri Sanjeev Kumar and Municipal Corporation of Delhi calling upon them to file reply to the above reference. It is clear in the reply that the management had taken certain objections inter alia that reference is bad in the eyes of law and the present dispute is not an industrial dispute and as such, reference is liable to be rejected. It has also been alleged in the reply that no demand notice has been served upon the management. Reference has also been made to the judgement of the Apex Court in the case 'Eastern Coal Fields Ltd. Vs. Anil Badyakar & Others, Civil Appeal No.3957/2009 dated 15.05.2009, wherein it has been observed that 'compassionate employment cannot be claimed and offered after a lapse of time and after crisis is over'.

4. In para 6 of the reply, management has also alleged that as per rules and regulations laid down by the Government of India for appointment on compassionate grounds, there is only a limited quota of 5% and there is huge backlog waiting for such appoints. No appointment can be made beyond the fixed quote of 5% on compassionate Grounds. It is also settled proposition of law that appointment on compassionate grounds cannot be claimed as a matter of right. It is also alleged that as per aforesaid Government of India instructions, appointment on compassionate grounds is to be given to one of the family members of the deceased regular employee, subject to the condition that family of such deceased employee should be in distress.

5. Since in the instant case, the claimant had applied for employment on compassionate grounds, his application was duly considered by the 'Compassionate Appointment Committee' consisting of Shri Janak Digal, the then Additional Commissioner (Labour), alongwith other members in its meeting held on 28.04.2009 and the same was rejected as the claimant had zero points in terms of criteria laid down by the Labour Welfare Department. The relevant minutes of the meeting has also been annexed with the reply. There is reference to circular No.LWD/HQ/2009/450 dated 18.06.2009 of the Labour Welfare Department, laying down the criteria for appointment on compassionate grounds and Annexure B alongwith corrigendum as Annexure C.

6. Since the workman Shri Sanjeev Kumar had not appeared before the Tribunal despite service of valid notice, as such it is apparent that the workman is not interested in prosecution of the present case. Moreover, it is crystal clear from the minutes of the meeting held on 28.08.2009—Annexure A, that the meeting of the Compassionate Appointment Committee was held on the above date in the chamber of Shri Janak Digal, the then Additional Commissioner (Labour), which was attended by Shri A. K. Sharma, Chief Law Officer-Member, Shri Deepak Hastir, Director(Personnel)-Member and Shri M. K. Bhardwaj, Administrative Officer(Esstt.)-I Member Secretary, that there were as many as 133 cases received for appointment on compassionate grounds, which were duly considered by the Committee against vacancies of LDC-03 posts, Peon-01 post, Chowkidar-02 posts, Assistant Sanitary Inspector-05 posts and Driver-01 post. All these posts have accrued in 5% quota for compassionate grounds in 2008. To eliminate possibility of any kind of subjective-ness as well as arbitrariness, Labour Welfare Department of MCD issued parameters/criterion in terms of numerical grading based on various socio-economic factors.

7. After taking into consideration, the above criteria, the Committee has considered the case of the workman hereinabove, along with other applications and the workman scored zero points on the basis of criteria mentioned above, details of which are fully contained in Annexure A.

8. There is another aspect of the matter which cannot be altogether ignored. IIT has also been held by the Hon'ble Apex Court in the case of 'Eastern Coal Fields Ltd. Vs. Anil Badyakar & others, Civil Appeal No.3957/2009 dated 15.05.2009 that compassionate appointment is not a vested right which can be exercised at any time in future. Compassionate employment cannot be claimed and offered after a lapse of time and after the crisis is over. Purpose of providing compassionate employment to a dependent of Government servant or person working in any private undertaking dying in harness is to mitigate the financial hardship caused to the family of the deceased employee on account of his unexpected death while in service. None of these considerations can operate when there is considerable time in approaching the employer for employment. Thus, delay is always fatal to the compassionate appointment. In view of the ration of the law discussed above, case of the workman, in the case in hand cannot be legally considered for appointment on compassionate grounds more so when the workman has not cared to pursue the claim/reference before this Tribunal throughout the proceedings.

9. As a sequel to the aforesaid discussion, it is held that the workman is not entitled for being considered for compassionate appoint. An award is accordingly passed.

Let this award be sent to the appropriate Government, as required under Section 17 of the Industrial Disputes Act, 1947, for publication.

Dated : the 9th January, 2015

A. C. DOGRA, Presiding Officer

नई दिल्ली, 22 जनवरी, 2015

**का.आ. 190.—**औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार दिल्ली नगर निगम के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय नं.-1, दिल्ली के पंचाट (संदर्भ संख्या 1/2013) को प्रकाशित करती है, जो केन्द्रीय सरकार को 21/01/2015 को प्राप्त हुआ था।

[सं. एल-42011/137/2012-आईआर (डीयू)]

पी. के. वेणुगोपाल, डेस्क अधिकारी

New Delhi, the 22nd January, 2015

**S.O. 190.—**In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. 1/2013) of the Central Government Industrial Tribunal-cum-Labour Court No.-1, Delhi now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of the Municipal Corporation of Delhi, and their workmen, which was received by the Central Government on 21/01/2015.

[No. L-42011/137/2012-IR(DU)]

P. K. VENUGOPAL, Desk Officer

#### ANNEXURE

#### IN THE COURT OF SHRI AVTAR CHAND DOGRA, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM- LABOUR COURT NO. 1, KARKAROOMA COURT COMPLEX, DELHI

ID No.1/2013

The General Secretary,  
Hospital Employees Union,  
Agarwal Bhawan,  
GT Road, Tis Hazari,  
Delhi 110054

...Workman

#### Versus

The Commissioner,  
Municipal Corporation of Delhi  
Town Hall, Chandni Chowk, Delhi

...Management

#### AWARD

Smt. Madhu Mittal and Smt. Ranjal Munjal working as Dieticians at RBTB Hospital and Kasturba Hospital.

They were not treated at par with the nurses by the competent authorities of the 6<sup>th</sup> Central Pay Commission while recommending their pay scales. Hence, they approached the Hospital Employees Union, (in short the union) for redressal of their grievances. The union raised a dispute before the Conciliation Officer. Since the claim was contested by the Municipal Corporation of Delhi (in short the Corporation), conciliation proceedings ended into a failure. On consideration of failure report, so submitted by the Conciliation Officer, the appropriate Government referred the dispute to this Tribunal for adjudication, vide order No.L-42011/137/2012-IR(DU) New Delhi dated 17.12.2012, with following terms:

“Whether action of the management of Municipal Corporation of Delhi in not granting same pay and allowances to Smt. Madhu Mittal and Ms. Ranjan Munjal, Dieticians at par with the nurses employed by Municipal Corporation of Delhi with effect from 01.01.2006 is legal and justified. If not, what relief the concerned workmen are entitled to?

2. Claim statement was filed by the union that there are only 63 dieticians working in various Government NCT, MCD and NDBC hospitals of Delhi and handling diet management of about 15000 indoor patients. Besides, they are also dealing with outdoor patients. In addition, the dieticians also attend Diet Clinics and referred cases from OPD. Step-motherly treatment meted out to them vis-à-vis Nurses by the 6<sup>th</sup> Pay Commission while recommending their pay scales is unjustified. Doctors and Nurses are paid non-practising allowance and Nursing Care Allowance, but Dieticians are not paid any such allowance. Non-grant of pay scale to Dieticians equivalent to that of the Nurses is bad, unjustified and mala fide. Various communication sent to their higher authorities yielded no results.

3. Government of NCT of Delhi vide its order bearing No.F-24(174)/ND/130/2011/LAB/2570-2574 dated 09.01.2012 has also referred the same dispute to the Presiding Officer, Industrial Tribunal (now presided over by Shri Mahavir Singhal), Karkardooma Courts, Delhi and is now at the stage of cross-examination.

4. Written statement was filed by the management pleading that the dispute is not espoused by massive majority of the same category of workers or by any trade union, no demand notice has been served upon the management and reference has been made mechanically without application of mind. The workmen have mislead the Government of India by concealing the fact that they have already raised the same dispute before the State Government. They are also not entitled for any relief from the Hon'ble Tribunal as each and every post as its own separate recruitment regularities having some specific qualification, experience etc. prescribed by experts. Hence, Dieticians cannot be equated with Staff Nurses or Doctors, as duties of Dietician involves to prescribe diets to patients

and to supervise the Dietary Department, whereas duties of Staff Nurse and Doctors involved extensive and tremendous job of patients' care with high risks for which they are technically qualified. Even otherwise management has no role to play in revision of pay scale/pay band/grade pay of the posts ad the same is the sole prerogative/domain of Pay Commission constituted by Government of India.

5. The case was listed for filing of rejoinder for 09.01.2015. However, on the said date Shri Surender Bhardwaj deposed that he would like to withdraw the dispute since the same matter is pending before Shri Mahavir Singhal, Presiding Officer, Industrial Tribunal of State Government.

6. Shri Surender Bhardwaj, A/R for the claimant, vide separate statement has stated that the same is pending before Shri Mahavir Singhal, Presiding Officer, Industrial Tribunal of State Government and as such, does not want to pursue the present petition before this Tribunal. In view of the above, the reference petition is permitted to be withdrawn inasmuch as the same matter is pending for adjudication before Industrial Tribunal of State Government. An award is accordingly passed. Let this award be sent to the appropriate Government, as required under Section 17 of the Industrial Disputes Act, 1947, for publication.

Dated : the 9 January, 2015

A. C. DOGRA, Presiding Officer

नई दिल्ली, 23 जनवरी, 2015

**का.आ. 191.—**औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बैंक ऑफ इंडिया के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं.-2, धनबाद के पंचाट (संदर्भ संख्या 300/1999) को प्रकाशित करती है, जो केन्द्रीय सरकार को 23/12/2014 को प्राप्त हुआ था।

[सं. एल-12012/136/99-आईआर (बी.-II)]

रवि कुमार, डेस्क अधिकारी

New Delhi, the 23rd January, 2015

**S.O. 191.—**In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. 300/1999) of the Central Government Industrial Tribunal-cum-Labour Court No.-2, Dhanbad as shown in the Annexure in the Industrial Dispute between the management of the Bank of India, and their workmen, received by the Central Government on 23/12/2014.

[No. L-12012/136/99-IR(B-II)]

RAVI KUMAR, Desk Officer

**ANNEXURE**

**BEFORE THE CENTRAL GOVERNMENT  
INDUSTRIAL TRIBUNAL (NO.2),  
AT DHANBAD.**

**PRESENT :** Shri KISHORI RAM, Presiding Officer

In the matter of an Industrial Dispute under Section 10(1)(d) of the I.D. Act, 1947

**REFERENCE NO 300 OF 1999**

**PARTIES :**

Sh. Surendra Singh  
C/O Sh. Ramjee Singh,  
LIC-98, Housihg Colony, Dhanbad,

Vs.

The Manager,  
Bank of India, Giridih Region, Giridih,

Order No.L -12012/136/99-IR (B-II) dt.05.10.1999.

**APPEARANCES :**

On behalf of the workman/ : Mr. K. Chakraborty, Ld. Union Advocate

On behalf of the Management : Mr D. K. Verma, Ld. Advocate

State : Jharkhand Industry : Banking

Dated, Dhanbad, the 11th June, 2014.

**AWARD**

The Government of India, Ministry of Labour, in exercise of the powers conferred on them under Sec.10(1)(d) of the I.D. Act., 1947 has referred the following dispute to this Tribunal for adjudication vide their Order No. L -12012/136/99-IR (B-II) dt.05.10.1999.

**SCHEDULE**

“Whether the action of the Management of Regional Office of Bank of India Giridih in terminating the service of Sh. Surendra Singh Sepoy/Peon from the bank is justified? If not, what relief the workman is entitled to”?

2. Neither workman Surendra Singh nor his representative Advocate appeared nor any witness nor his witness produced despite last chance and more than ample opportunity for it. But Mr.D.K.Verma, the Ld. Advocate for the O.P./Management is present.

On perusal of the case record, I find that the case has been pending for the evidence of the workman since 8.11.2005 but despite Regd.notices to the workman by his name and addresses noted in the reference itself, he has been all along absent and never produced any witness on his behalf. The workman by his conduct appears to be

quite unwilling to contest the case. In such circumstances, the case is closed as no Industrial Dispute existent. Accordingly, it is passed an Award of ‘No Industrial Dispute existent’.

**KISHORI RAM, Presiding Officer**

नई दिल्ली, 23 जनवरी, 2015

**का.आ. 192.—**औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बैंक ऑफ इंडिया के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं.-2, धनबाद के पंचाट (संदर्भ संख्या 41/2013) को प्रकाशित करती है, जो केन्द्रीय सरकार को 23/12/2014 को प्राप्त हुआ था।

[सं. एल-12012/14/2012-आईआर (बी-II)]

रवि कुमार, डेस्क अधिकारी

New Delhi, the 23rd January, 2015

**S.O. 192.—**In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. 41/2013) of the Central Government Industrial Tribunal-cum-Labour Court No.-2, Dhanbad as shown in the Annexure in the Industrial Dispute between the management of the Bank of India, and their workmen, received by the Central Government on 23/12/2014.

[No. L-12012/14/2012-IR(B-II)]

RAVI KUMAR, Desk Officer

**ANNEXURE**

**BEFORE THE CENTRAL GOVERNMENT  
INDUSTRIAL TRIBUNAL (NO.2),  
AT DHANBAD**

**PRESENT :** Shri KISHORI RAM, Presiding Officer

In the matter of an Industrial Dispute under Section 10(1)(d) of the I.D. Act, 1947

**REFERENCE NO 41 OF 2013.**

**PARTIES :**

Shri Pintu Rajak,  
R/O Jalpura, Noorsarai,  
PO: Noorsarai, Distt: Nalanda, Bihar

Vs.

Zonal Manager,  
Bank of India, Zonal Office,  
Patna Zone, R-Block, Patna-1

Ministry's Order No L-12012/14/2012-IR(B-II) dt.06.02.2013.

**APPEARANCES :**

On behalf of the workman/Union : None

On behalf of the Management : Mr. B. B. Saran,  
Ld. Advocate  
State : Bihar Industry : Banking  
Dated, Dhanbad, the 15th July, 2014

### AWARD

The Government of India, Ministry of Labour, in exercise of the powers conferred on them under Sec.10(1)(d) of the I.D. Act.,1947 has referred the following dispute to this Tribunal for adjudication vide their Order No L-12012/14/2012-IR(B-II) dt.06.02.2013.

### SCHEDULE

“Whether the action of the Management of Bank of India in terminating the service of Shri Pintu Rajak, Daily Wager w.e.f. 26.11.2010 is legal and justified? What relief the workman is entitled to?”

2. Neither workman Pintu Rajak appeared nor any written statement along with any documents filed on his behalf despite the last chance for it. Mr. B.B. Saran, the Ld.Advocate for O.P./Management is present.

On perusal of the case record, I find that in spite of three Regd.Notices having been issued to the workman on his addresses as noted in the reference itself, he could not respond to it in a positive manner. The workman by his conduct clearly appears to be quite uninterested or reluctant in pursuing his case for its finality. Under these circumstances, it seems not any Industrial Dispute existent as raised relating to his alleged termination of his service as a Daily Wager.Hence, the case is closed as ‘No Industrial Dispute’. Accordingly an order is passed.

KISHORI RAM, Presiding Officer

नई दिल्ली, 23 जनवरी, 2015

**का.आ. 193.—**औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार पंजाब नेशनल बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं.-2, धनबाद के पंचाट (संदर्भ संख्या 21/2003) को प्रकाशित करती है, जो केन्द्रीय सरकार को 23/12/2014 को प्राप्त हुआ था।

[सं. एल-12012/114/2002-आईआर (बी.-II)]

रवि कुमार, डेस्क अधिकारी

New Delhi, the 23rd January, 2015

**S.O. 193.—**In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 21/2003) of the Central Government Industrial Tribunal-cum-Labour Court No.-2, Dhanbad as shown in the Annexure in the Industrial Dispute between the management of the Punjab

National Bank, and their workmen, received by the Central Government on 23/12/2014.

[No. L-12012/114/2002-IR(B-II)]

RAVI KUMAR, Desk Officer

### ANNEXURE

#### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL-TRIBUNAL (NO.2), AT DHANBAD

**PRESENT :** Shri KISHORI RAM, Presiding Officer.

In the matter of an Industrial Dispute under Section 10(1)(d) of the I.D. Act,1947.

#### REFERENCE NO 21 OF 2003.

#### PARTIES:

Kishor Prasad,  
NC/4-B, Lohia Nagar,  
Kankarbagh, Patna.-800001,

Vs.

The Zonal Manager,  
Punjab National Bank, Zonal Office,  
Chanaky Place, “R” Block, Patna,

Order No.L-12012/114/2002-IR (B-II) dt.27.01.2003.

#### APPEARANCES :

On behalf of the workman/Union : Workman (himself)

On behalf of the Management : Mr. Arshad Ilyas,  
Management  
Representative

State : Bihar Industry : Banking

Dhanbad, the 27th May, 2014.

### AWARD

The Government of India, Ministry of Labour, in exercise of the powers conferred on them under Sec.10(1)(d) of the I.D. Act.,1947 has referred the following dispute to this Tribunal for adjudication vide their Order No.L-12012/114/2002-IR (B-II) dt.27.01.2003.

### SCHEDULE

“Whether the domestic enquiry conducted by the Punjab National Bank, Ara Branch, Bihar in the case of Shri Kishor Prasad, Part Time Sweeper was free and fair, and the punishment order of termination from Banks services was justified ? If not, what relief the workman is entitled to?

On receipt of the Order No. L-12012/114/2002-IR (B-II) dt. 27.01.2003 of the above mentioned reference from the Government of India, Ministry of Labour & Employment, New Delhi for adjudication of the dispute,

the Reference Case No. 21 of 2003 was registered on 06.03.2003 and accordingly an order to that effect was passed to issue notices through the Registered Posts to the parties concerned, directing them to appear in the Court on the date fixed, and to file their written statements along with the relevant documents. In pursuance of the said order, notices by the Registered Posts were sent to the parties concerned.

Both the parties made their appearances and filed their pleadings and photocopies of their documents. The workman and the O.P./Management himself and through their own Representatives appeared in, and contested the case.

2. The case of workman Kishore Prasad is that though he was originally appointed as a permanent sweeper on 01.01.1984, he was designated as part time Sweeper. He had been continuously working satisfactorily. The alleged theft of Rs.3, 63,975.80 on 27.03.1991 after the closure of business at 5.30 p.m. was committed by the actual guilty officials who had hatched a plan to falsely implicate the poor workman in order to save their skin. The interested official lodged a police case GR No. 271/91/T.R.501/96 against the workman/petitioner for the alleged theft. To utter surprise, he was also issued a false and frivolous chargesheet dt.15.9.1994 during the pendency of the criminal case, in which he was acquitted by an order/judgment dt. 29.11.1996, even against which the Cri.Rev.99/947 filed by the anti-labour Management was also dismissed as per order dt.23.7.1997 of the Hon'ble High Court, Patna. When the Writ petition of the petitioner in challenge to his termination dt.10.5.1999 before the same Hon'ble High Court was disposed of directing him to file an appeal, challenged his termination before the A.L.C.(C),Patna, but the same ended in failure due to the adamant attitude of the Management, finally resulting in the reference for an adjudication. Not only the domestic enquiry conducted but also the action of the Management on terminating his service is illegal and unjustified, as it was vindictive and anti- labour policy of the Management. His termination was too harsh and disproportionate to the alleged offence. So he urges for his reinstatement with full back wages and other incidental benefits.

3. The Union Representative in his rejoinder for the workman has specifically denied all the allegations of the O.P./Management, alleging that no question of handing over the keys of the collapsible Gate and wooden door of the Branch to the workman, a part time sweeper, on the ground of the permanent guard's leave arises. The Management appreciated it impossible to prove the charges in a criminal case, so a false and frivolous charge sheet was issued after the lapse of three years during the pendency of the criminal case despite the protest of the workman for it. Though the workman was acquitted in the criminal case in the year 1996, he was illegally inflicted with punishment by the Management.

4. On other hand, the contra pleaded case of the O.P./Management with categorical denials is that the service conditions of the workman Staff in the Banking Industry are governed by the provisions of the Sastry Award, Desai award and various Bipartite Settlements. Chapter 19 of the 1<sup>st</sup> Bipartite Settlement as amended up-to-date prescribes the procedure for taking disciplinary action against a workman employee. Sri Kishor Prasad was working as the Part Time Employee (Sweeper) at BO:Amaon. He was served with the charge sheet dt.15.9.1994 for the allegation of taking out Rs.3,63,975.80 (Rupees three lacs sixty three thousand nine hundred seventy five and paisa eighty only) by breaking open the Strong room between March 27 and 30,1991 (Closing and opening hours the Bank respectively) with the keys of the collapsible gate and wooden door of the Branch which were handed over to him by the permanent guard of the Branch going on leave so as to facilitate the opening and cleaning of the Bank premises on the next working day. Earlier, the workman was also placed under suspension and an FIR was also lodged with the police on 30.03.1991. In respect of the charge sheet dt.15.9.1994 served upon the workman, the Disciplinary Authority ordered the departmental enquiry as per order dt.16.5.1996. The Enquiry Officer submitted his report dt.8.8.1996 to the Disciplinary authority, holding the charges alleged as proved.

Having agreed with the findings and reasoning of the Enquiry Officer, the Disciplinary Authority after giving the workman an opportunity for personal hearing over his proposed punishment of termination of Bank Service with three months' pay and allowance confirmed the punishment of his termination as per the order dt.10.5.1999. The Appeal dt.10.5.2000 as preferred by the workman against the final order of the Disciplinary Authority was also dismissed by the Appellate Authority as per the Order dt.07.08.2000.

5. Further alleged that the Disciplinary action was taken against the workman according to the provision under clauses 19.3(C), 19.11 and 12 of the Bipartite Settlement open to the employer to proceed against workman employee departmentally, the punishment inflicted upon the workman is commensurate with the gravity of allegation established against him. In fact, the workman was acquitted of the criminal charges at benefit of doubt in the criminal proceeding as per the Judgment dt.29.11.1996, against which the Revision Petition filed by the OP/Management before the Hon'ble High Court was also dismissed. The criminal proceedings and departmental proceeding stand entirely on different footings; the offence in the criminal proceedings is required to be proved beyond all reasonable doubts, but the level of proof in the departmental proceedings acts upon the preponderance of the evidence. The action of the Bank against the workman has been taken in accordance with the provisions of the Bipartite Settlement after holding fair and proper

enquiry, and accordingly the punishment of his termination is proportionate to the gravity of the allegation proved against him. The O.P./Management has urged for substantiating the charge against the workman at the preliminary issue, if the enquiry found unfair.

6. Categorically denying the allegations of the workman, the OP/Management has pleaded that workman Kishor Prasad had joined on 01.09.1981 as a part time sweeper on consolidated wages of Rs.60/- per month subsequently enhanced at 1/3<sup>rd</sup> of the scale wage of subordinate staff w.e.f. 01.07.1984 at the BO:Amaon. The charge sheet of the theft was based on evidences. He was suspended 28.02.1992. Despite all Registered Letters sent to the workman returned with Service Report “LENE SE INKAR KIYA”, he neither appeared nor cooperated in the enquiry before the Enquiry Officer, the enquiry was concluded ex-parte; thereafter, as per the enquiry report dt.17.03.1999 by the Enquiry Officer, the charge was held to have been proved against the workman. The W.P. No. 1502/98 filed by the workman before the Hon’ble Patna High Court was disposed of as per the Order dt. 11.1.1999.

#### FINDING WITH REASONS

7. On perusal of the evidences of MWI Rajeev Kumar Saxena, the Sr.Manager, Circle Office, P.N.B at the preliminary issue, the Tribunal has held the domestic enquiry quite fair and proper as per the Order No.35 dt.26.2.2013. In resulted in hearing the final Argument of both the parties on merits.

Mr. Kishor Prasad, the workman himself as per his written argument has to submit that at the trial of the alleged theft charge against him in the Civil Court, Bhabhua, in regard to Chainpur Police case concerned, he was acquitted of it as per the judgment of the Court concerned (not any Certified or plain copy of any document filed by the workman as evident from the instant case record) which remained intact upto the Hon’ble High Court concerned, yet neglecting the judgment of the workman’s innocence and whereas the allegation of the theft, the very basis of the department proceeding, had ended, even then the O.P./Management by holding ex-parte enquiry against him without principle of natural justice, illegally punished him with termination of his service for the theft in the Punjab National Bank, Branch:Araon (Distt: Kaimur), so he is entitled to his reinstatement in service.

Whereas Mr. Arshad Ilyas, the Manager as the Representative for the O.P./Management has to contend that Kishor Prasad, the Part-time Sweeper of the Bank Branch, had committed the theft about 36 Lacs and odd thousands from the Cash Safe by breaking open the gate of Strong Room of the Bank during the closing and opening of the Business of the Bank on 27<sup>th</sup> & 30<sup>th</sup> March, 1999 with the Bank keys kept in the filing Cabinet, the aforesaid

misconduct was highly prejudicial to the interest of the bank, putting the Bank in serious loss; the charges as per the chargesheet (Ext.M-2) levelled against him were established against the workman in the course of the Departmental enquiry, which proceeded ex-parte on the repeated refusal of the workman to receive the several enquiry notices (Extt.M.5 Series) for his appearance though he had submitted his reply to the chargesheet (Ext.M.3). It is also submitted on behalf of the O.P./Management that despite ample opportunities for his defence, the workman also failed to appear before Disciplinary Authority to respond to the Show Cause Notice (Ext.M.8) against the proposed punishment of termination from his service. On due consideration of the Enquiry Report and other relevant materials on the records as well as the circumstances, the Disciplinary Authority concluded that the workman must not allowed to continue in the service of the Bank. So in view of the grave nature of the misconduct of the workman, the Disciplinary Authority as per Order dt.10.5.1999 (Ext.M.9) has rightly terminated his services with three months Pay and Allowances in lieu of the Notice as per clause 19.3(3) of the Bipartite Settlement (as amended). Where an employee of the Bank dealing with public money has no good conduct and integrity, no Bank can keep the person on its employment as held in the case of Managing Director Vs. United Commercial Bank Vs. P. C. Kakkar reported in AIR 2003 (SC) 1571. So the Ld.Bank Representative has underlined the punishment of termination to the workman for his grave misconduct is quite proportionate to the gravity of the aforesaid allegation proved against him, as such in view of the justified act of the Bank in terminating him as per the aforesaid provision of the Bipartite Settlement, the workman having lost his integrity towards the Bank is not entitled to any reinstatement in any service.

On perusal and consideration of the materials available on the case record, I am of the opinion as also submitted by the Ld.Representative for the O.P./Management holds that it is well settled legal position that acquittal in Criminal Case is not a bar to proceeding departmentally against the workman for his aforesaid misconduct. As in the both types of proceedings, the standard of proof and mode of enquiry are quite different. It is settled law that in case of criminal proceedings, the acquittal is based on positive findings of innocence or on merits, no defects can be found in the Disciplinary proceedings initiated against the acquittal. The Departmental proceedings act on the preponderance of the evidences, whereas the offence in the criminal proceedings needs to be proved beyond reasonable doubts. In the instant case, the non-appearance of the workman either in the departmental enquiry or before the Disciplinary Authority even after second Show Cause appears to be prima facie his willful evasion from his liability toward the charge. The Banking service is a public service

highly sensitive which requires good character and integrity of the workman who lacks it in the instant case.

Under these circumstances, it hereby, in the terms of the Reference responded and accordingly awarded, that the domestic enquiry conducted by the Management of Punjab Nation Bank, Ara Branch, Bihar, in the case of Shri Kishor Pasad, Part-time Sweeper, was quite free and fair, and the punishment order of his termination from the Bank services was not only justified but also legal. Hence, the workman is not entitled to any relief.

KISHORI RAM, Presiding Officer

नई दिल्ली, 23 जनवरी, 2015

**का.आ. 194.—**औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार गार्डन रीच शिप बिल्डर्स एंड इंजीनियर्स लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, कोलकाता के पंचाट (संदर्भ संख्या 08/2002) को प्रकाशित करती है, जो केन्द्रीय सरकार को 12/01/2015 को प्राप्त हुआ था।

[ सं. एल-32011/5/99-आईआर (एम) ]

जोहन तोपनो, अवर सचिव

New Delhi, the 23rd January, 2015

**S.O. 194.—**In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 08/2002) of the Central Government Industrial Tribunal/Labour Court, Kolkata as shown in the Annexure in the Industrial Dispute between the management of the Garden Reach Ship Builders and Engineers Limited, and their workmen, which was received by the Central Government on 12/01/2015.

[No. L-32011/5/99-IR(M)]

JOHAN TOPNO, Under Secy.

#### ANNEXURE

#### CENTRAL GOVERNMENT INDUSTRIAL- TRIBUNAL AT KOLKATA

#### Reference No. 08 of 2002

**Parties:** Employers in relation to the management of Garden Reach Ship Builders and Engineers Ltd.

#### AND

Their workmen

**Present:** Justice DIPAK SAHA RAY, Presiding Officer

**Appearance:**

On behalf of the Management : Mrs. K. Bhattacharyya,  
Ld. Counsel

On behalf of the Workmen : None

State : West Bengal

Industry : Railways

Dated: the 6<sup>th</sup> January, 2015

#### AWARD

By Order No.L-32011/5/99-IR(M) dated 27.02.2002 the Government of India, Ministry of Labour in exercise of its powers under Section 10(1)(d) and (2A) of the industrial Disputes Act, 1947 referred the following dispute to this Tribunal for adjudication:

“Whether the action of the management of Garden Reach Ship Builders & Engineers Ltd. in dismissing Sh. Basudev Mitra from service w.e.f. 30.6.94 is legal and justified? If not, what relief the workman is entitled?”

2. When the case is taken up for hearing today, none appears on behalf of the workmen though the management is represented by its Ld. Counsel. It appears from the record that the concerned union is not appearing inspite of service of notice.

3. Considering the facts and circumstance, it appears that the union is not at all willing to proceed with the case further. So, no fruitful purpose will be served in keeping the matter pending.

4. In view of the above facts and circumstances, present reference is disposed of by passing a “No Dispute Award”.

Dated, Kolkata,  
The 6<sup>th</sup> January, 2015

Justice DIPAK SAHA RAY, Presiding Officer

नई दिल्ली, 23 जनवरी, 2015

**का.आ. 195.—**औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार विवेकानंदा केंद्र एन. आर. एल. हॉस्पिटल, नुमालीगढ़ के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, गुवाहाटी के पंचाट (संदर्भ संख्या 07/2012) को प्रकाशित करती है, जो केन्द्रीय सरकार को 12/01/2015 को प्राप्त हुआ था।

[ सं. एल-30012/36/2011-आईआर (एम) ]

जोहन तोपनो, अवर सचिव

New Delhi, the 23rd January, 2015

**S.O.195.—**In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 07/2012) of the Central Government Industrial Tribunal/Labour Court, Guwahati now as shown in the Annexure in the Industrial Dispute between the employers in relation to

the management of the Vivekananda Kendra NRL Hospital, Numaligarh and their workmen, which was received by the Central Government on 12/01/2015.

[No. L-30012/36/2011-IR(M)]

JOHAN TOPNO, Under Secy.

#### ANNEXURE

#### IN THE CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, GUWAHATI, ASSAM

**Present :** Shri L. C. DEY, M.A., LL.B, Presiding Officer, CGIT-cum-Labour Court, Guwahati

#### Ref. Case No.07 of 2012

In the matter of an Industrial Dispute between :-

The Management of Vivekananda Kendra NRL Hospital, Numaligarh, Golaghat, Assam

Vrs.

Their workman Sri Jibon Jyoti Borah, Lab. Tech. Emp. No. 2008, Kahilipara, Guwahati

#### Appearances :

For the Workman : Mr. S. Chamoria, Advocate

Mr. N. Konwar, Advocate

Mr. M. Das, Advocate

For the Management : Mr. S.N. Sarma, Sr. Advocate

Mr. S.C. Koyal, Advocate

Miss. K. Hazarika, Advocate

Date of Award : 14.11.2014

#### AWARD

1. This Reference is arising out of an Industrial Dispute exists between the employers in relation to the Management of Vivekananda Kendra NRL Hospital, Numaligarh and their workman Shri J.J. Borah on account of his dismissal from service by the Management after discharging his duties for 11 years, which was referred to by the Ministry of Labour and Employment vide their Order No.-L-30012/36/2011-IR(M) Dated: 31/01/2012. The Schedule of the Reference is as under.

#### SCHEDULE

“Whether the NRL, VKNRL authority have adopted right step in dismissal Shri J. Jyoti Borah, from this services of 11 years standing. If not whether the management could be directed to reinstate Shri Borah with all back wages or from the date of such order as may be issued by the appropriate authority.”

2. On receipt of the order of Reference from the Ministry of Labour and Employment, Government of India, New Delhi, this Reference Case was registered and notices were

also issued upon both the parties with direction to file their Claim Statement/Written Statement and documents and to exchange their respective copies of Claim Statement/Written Statement and documents between them. Accordingly both the parties appeared and submitted their Claim Statement/Written Statement.

3. The case of the workman, as it appears from the claim statement submitted by him, in brief, is that he was appointed as a Laboratory Technician in the Hospital of Vivekananda Kendra NRL Hospital, (hereinafter called VKNRL Hospital) through the Selection Committee of NRL Authority on 02.04.99; and on 01.05.1999 he joined the service. On completion of one year probation period he was confirmed on 01.05.2000 by the Authority. On 16.5.09 the Secretary of VKNRL Hospital issued a show cause notice against him intimating him that an enquiry would be held against him on the charge of misconduct on three articles of charges disclosing the acts alleged to have been committed by him amounts to misconduct under the Standing Order 3(A), (1) and (j) with instruction to explain by 3 P.M on 26.05.09 as to why he should not be dismissed or otherwise punished. In response to the said show cause notice he submitted reply on 26.05.09 denying all the charges levelled against him with explanation that due to acute headache he could not attend the call duty of 26.05.09; and as he was not in a position to move to the hospital which he informed Sri Promode Dutta, the Driver of the vehicle who came to his residence, to intimate the Doctor in-charge about his indisposition. The workman mentioned that he was on leave for few days and he joined his duty on 1.06.09 while the Enquiry Officer conducted the enquiry on 02.06.09. The Enquiry Officer being the Trustee Member of VKNRL Hospital, himself cross-examined the workman being himself a Disciplinary Authority. He added that sufficient opportunity was not provided to him by the Enquiry Officer to furnish the evidence and documents by him and that the Enquiry Officer allowed him half an hour time to call the witnesses. The Secretary of VKNRL Hospital, issued the second show cause notice on 27.06.09 intimating him that having been satisfied with the findings of the enquiry officer the Disciplinary Authority proposed to dismiss him from service. Upon which the workman submitted reply on 22.7.2009 refuting all the finding of the enquiry report as the Enquiry Officer had failed to substantiate the charges levelled against him. Subsequently by a letter dated 11.8.09 the Secretary VKNRL Hospital informed him the decision of the management to discharge him from service and asked him to vacate the quarter provided to him within 15 days. Thus the decision of the management to discharge him from service is arbitrary and unjust and in violation of principle of natural justice, equity and good conscience. No reasonable opportunity of hearing was given to him and the management was pre determined to dismiss him from service. The workman further stated that as regards the charge against him for his failure to attend the call

duty on 28.3.09 he had explained the circumstances for which he failed to attend the call duty and the witnesses in their evidence have clearly stated about the physical condition of the workman on that particular date but this evidence was not appreciated in proper perspective. He again stated that he is suffering from migraine which causes recurrent throbbing headache which affect one side of the head often accompanied by nausea and disturbance of vision and on that date he was suffering from migraine headache for which he explained to the authority to perform the pathological examination in such a condition is unreasonable and unjustifiable. The workman said that he was charged of committing misconduct mentioned in the item No.3(a), (1) & (j) of the Standing Order but there is no mention in the enquiry report that he was found guilty under the Standing Order; and that the management has imposed the harsh punishment of charge from service without any clear findings of the Enquiry Officer that he had been habitually negligent in his work; and that physical unfitness can not be construed as willful insubordination or disobedience. Thus the allegation of habitual negligence towards the duty is purely based on whims and caprice of the management of VKNRL hospital. He further contended that except the aforesaid unfortunate day he never failed to attend his duty and no previous instance have been cited or discussed in the enquiry report. and also there is no evidence at all in support of the charge of the habitual negligence against him. Hence, the workman prayed to direct the management as to why the dispute raised out of the above mentioned fact and it shall not be settled amicably by haring both the parties to the dispute and also to direct the management of VKNRL hospital not to alter the condition of the service of the workman and allow the workman to stay in the quarter provided to him.

4. The management of VKNRL contested the proceeding filing written statement stating inter-alia that the appropriate government has referred this dispute mechanically without application of mind, without verifying the facts, materials and circumstances of the matter as well as the terms of reference is absolutely vague and a stale dispute as admittedly the workman was discharged long ago on 11.8.09 was referred. As such, the order of reference is liable to be rejected. The management pleaded that the workman was in the habit of committing misbehavior during the working hours and he was earlier charge sheeted and was found guilty, however, on his assurance not to commit such misconduct in future the management took lenient view and in stead of dismissing him warned him and was suspended for four days. On 28.3.2009 he was on call duty and when a serious patient was admitted in the hospital he was immediately asked to attend the Hospital and to bring him to the hospital ambulance was sent to his residence but the workman refused to come and sent back the ambulance. The authority having no other option but to call a specialized

Doctor who was not on duty at that time, as the patient was in very serious condition. Thus the act of the workman was that of not only inhumanitarian but also disobedience to the order of his superiors while on call duty. Accordingly the workman was asked to show cause and finding his show cause not satisfactory he was charge sheeted wherein it was specifically mentioned that his earlier misconduct would also be taken into consideration in deciding the instant misconduct. Thereafter a full fledged enquiry was held in compliance of natural justice. The Enquiry Officer found the workman guilty of the charges and accordingly he forwarded his enquiry report to the workman for his representation if any, and after receipt of his explanation management took into account the charges, his explanation, the enquiry proceeding, findings of the enquiry officer as well as representation of the workman against the findings; and on perusal of the above documents the management found the workman not fit for the service of the hospital and accordingly decided to discharge him from his service.

Further case of the management is that the workman committed misconduct under clause 3(a),(i) & (J) and as such the Management on being not satisfied with the reply of the workman charges were framed vide order dated 16.5.2009 and issued to the workman asking him to submit his reply within 10 days.

- “No.1 That on 28.3.2009 when Ambulance Driver Sri Promod Dutta went to your residence at 11 P.M. with call Book sent to you by G.D.M.O. on duty for some urgent investigations of a patient admitted in causality, you refused to attend the call despite being on “call duty on 28.3.2009”, which speaks of your negligence to your work and duty.
- No.2 Not only did you decline to attend the duty, you also failed to give any intimation to the Doctor on duty, or your Head of the Department and hospital Administrative Officer which clearly reflects your utter lack of responsibility and negligence and your disrespect to a noble profession that too in a Hospital founded on the philosophy of Swami Vivekananda based on noble moto to serve affected patient coming to the Hospital for treatment under emergent physical condition.
- No.3 It is also brought to your notice that you have been warned previously for similar lapses and derelictions, copies of which are enclosed at exhibit-H,I,J,K,L,M,N, which will be taken into consideration when deciding your case.”—

Accordingly the workman submitted his reply to the said charge sheet vide his letter dated 25.5.09 but finding the replies/explanation of the workman unsatisfactory it was decided to hold an enquiry and

accordingly Sri Bharat Baruah was appointed as Enquiry Officer by the management. The Enquiry Officer by his letter dated 28.5.09 informed the workman about the date and venue of the enquiry along with the information that the workman can take help/assistance of his co-worker. In the enquiry commenced on 2.6.09 the workman duly participated in the proceeding and both the sides adduced evidence and documents. After recording of the proceeding the workman was explained and read over the same which he acknowledged by putting his signature. The copies of the proceeding were supplied to the workman and the enquiry was held in cordial environment where there was no complaint from either side and the Enquiry Officer also has acted most impartial and unbiased manner by giving ample opportunities to the workman to cross-examine and re-examine the witnesses for the management and led his evidence in support of his defence. There was also no violation of principle of natural justice. On conclusion of domestic enquiry the Enquiry Officer submitted his report on 17.6.09 with his findings that all the 3 charges against the delinquent workman were found established beyond doubt. The copy of the enquiry report was also forwarded to the workman vide letter dated 27.6.09 while the workman duly received and replied to the same on 22.7.09. Thereafter the management considering all the materials on record concurred with the findings of the Enquiry Officer and also found that there are no extenuating circumstances to mitigate the offence and hence, it was decided to dismiss him but taking a lenient view he was not dismissed and he was discharged from service by order dated 11.8.09. It is mentioned by the management that the workman has been gainfully employed since the date of his discharge from service i.e. 11.8.09, and being an ex-laboratory Technician of a prestigious Institution like VKNRL Hospital, the workman is now deriving substantial income from various nursing homes and having other source of income also. The management also denied all the allegations raised by the workman in his claim statement except which are admitted as well as on record. Hence, the management prayed to declare that the domestic enquiry is valid and proper and to uphold the discharge of the workman deciding the reference in favour of the management with cost.

5. The workman examined himself as W.W.1 in order to establish his case while the management examined three witnesses including Dr. Ranjan Kumar Mahanta, the Medical Superintendent of Management of VKNRL Hospital, Numaligarh (MW.1), Sri Promode Dutta, the Driver of the Ambulance of VKNRL Hospital, Numaligarh (MW.2) and Dr. Barnali Deuri, SMO pathology of VKNRL Hospital, Numaligarh (MW3.). Both the parties have proved the documents in support of their respective evidence and they have also argued at length.

6. The workman Witness No.1, Sri Jibon Jyoti Borah, the claimant stated that he was appointed as Laboratory

Technician in the VKNRL Hospital, Numaligarh on 2.4.99 vide Exhibit-1 and he joined his duty on 1.5.99, and after successful completion of one year probation period his service was confirmed vide letter dated 1.5.2000 marked as Exhibit-2 issued by the VKNRL Hospital. On 16.5.09 the Secretary of VKNRL Hospital issued a show cause notice along with statement of charges to him intimating that an enquiry would be held against him on the charges of misconduct under Standing Order 3(a), i & j vide Exhibit-3, while the workman submitted his reply dated 25.5.09 vide Exhibit-4 denying all the charges levelled against him and explained that due to acute headache he could not attend the call on 28.03.09 as he was not in a position to move to Hospital which he informed Sri Promode Dutta the Driver of the Ambulance who came to his residence with call Register. The workman also said that another person was engaged by Doctor In-charge to perform the pathology examination of the patient. Later on he came to know that nothing serious was detected in the pathological examination. He also mentioned that he was on leave for few days and joined his duty on 01.06.09 and the enquiry was conducted on 2.6.09, but the Enquiry Officer himself cross-examined him as he himself was the disciplinary authority i.e. a Trustee Member of VKNRL Hospital. He added that sufficient opportunity was not provided to him by the Enquiry Officer to furnish evidence and documents on his behalf and that the Enquiry Officer allowed him only half an hour time to call the witnesses if any but no opportunity was given to furnish the documents. The workman further mentioned that the driver of the Ambulance and the then Doctor In-charge during their examination stated before the Enquiry Officer about his health condition on that night and also affirmed that it was intimated to the Enquiry Officer by the Driver of the Ambulance. He has proved the copy of letter dated 18.07.09 vide exhibit-5 along with the statement made by the Enquiry Officer vide Exhibit-5(1) issued by Capt. R.Joshi, Secretary of VKNRL, along with the statements of Exhibit-5(2), 5(3) and 5(4). The W.W.1 stated that on 27.6.09 the Secretary VKNRL Hospital, Numaligarh issued second show cause notice (Exhibit-6) enclosing the enquiry report marked as Exhibit-7 intimating him that the Disciplinary Authority on being satisfied with the findings of the Enquiry Officer, proposed to dismiss the workman from service vide Exhibit-6, whereupon he submitted his reply refuting all the findings of the Enquiry Officer vide Exhibit-8. Subsequently the Secretary, VKNRL informed him the decision of the management to discharge him from service and asked him to vacate the quarters within 15 days vide Exhibit-9. The workman contended that the decision of the management to discharge him from service is arbitrary, unjust and in violation of principle of natural justice since no reasonable opportunity was given to him. He also added that he was a patient suffering from migraine and on that date he was suffering from migraine headache and it was not at all possible for him to perform the pathological

examination in such a condition and as such, expectation to the authority to perform the pathological works is unreasonable and unjustifiable. In support of his medical ground he has proved medical certificates and prescriptions vide Exhibits-10,11,12,13& 14. He further contended that although he was charged of committing misconduct narrated in clause No.3(a), (i) & (j) of the Standing Order in the enquiry report nothing has been stated to indicate to prove that he was found guilty of committing misconduct under Standing Order. Rather the management has imposed major punishment of discharge from service without any clear findings of the Enquiry Officer to the effect that he had been habitually negligent in working; and that the sole incident of failure to attend the call on duty on 28.03.09 occurred due to physical unfitness can not be construed as willful insubordination or disobedience. In course of his cross-examination the workman stated that at present he is residing at his own residence at Kahilipara, Guwahati and the quarter allotted to him has not been vacated in spite of issuing him repeated order to vacate the same. He admitted that on 22.12.03 he was suspended for 4 days for misconduct vide Exhibit-A whereupon Exhibit-B is his explanation to the Medical Superintendent, VKNRL admitting his guilt in reply to show cause issued by the management; and on receipt of his explanation the management took a lenient view and awarded a final warning vide their letter dated 21.4.2004 proved as Exhibit-C. He also admitted that Doctor B.Deuri, Head of Department, VKNRL issued a letter to the Medical Superintendent, VKNRL Hospital regarding not joining by him after expiry of his leave; and thereafter a show cause notice was issued against him vide Exhibit-E whereupon he submitted his explanation vide Exhibit-F. On receipt of his explanation a formal show cause notice was issued against him vide Exhibit-G and he replied to the said show cause vide Exhibit-H and then the workman vide his letter dated 4.6.2005 (Exhibit-I) admitted the charges framed against him vide Exhibit-G, while the management imposed punishment of break of service and loss of pay and allowance for the period of his absence vide their letter marked as Exhibit-J. The workman also admitted that there is rule in their hospital that all the medical staff are allotted one week call duty when they can stay at their own quarter/resident and they are to attend the hospital on call in case of emergency; and on 28.3.09 when he was on call duty the hospital authority sent one Ambulance along with an order through the Driver for attending emergency call. Accordingly the driver handed over the call Register which he read over but he refused to attend the duty and informed the driver to inform the Doctor that he is not feeling well. The workman further mentioned that he was suffering from migraine and he was using medicine occasionally but he can not say the name of the said medicine and he was also treated in VKNRL Hospital sometime for migraine but he could not produce any document in support of this statement. He again admitted

that VKNRL hospital maintain a Register entering the name of the patient before starting treatment and VKNRL hospital individual medical file is maintained for each and every medical employee and his family but he did not call for that file. He also admitted that an enquiry was held against him wherein he was present and he had examined his defence and also cross-examined the management witnesses; and the findings of the Enquiry Officer was forwarded to him Vide Exhibit-6. He denied the suggestion tendered by the management that on 28.3.09 he was not feeling well and suffering from headache, and that he has been working now in a pathological centre at Guwahati. He again stated that on 29.3.09 when he attended his duty he did not get examined himself for his disease i.e. migraine, but he was treated as out door patient at International Hospital, Guwahati for fever once and he did not take any leave in the month of March, 2009.

The management witness No.1 Dr. Ranjan Kr. Mahanta, the Medical Superintendent of management of VKNRL Hospital, Numaligarh stated that on 28.3.09 a serious patient was admitted in their hospital when the workman was on call duty was asked to attend the hospital and to bring him, the hospital ambulance was sent to his house driven by Promode Dutta, the Ambulance Driver but the workman refused to come to the hospital to attend emergency call and sent back the ambulance. Thereafter he called Dr. B.Deuri, In-charge, Pathology Department of the Hospital who was not on call duty on that day. The MW.1 further mentioned that the act of the workman was not only in-humanitarian but also dereliction of the duty and disobedience of the lawful order of the superior. The workman also did not make any intimation to the Doctor and/or his department on duty. As such, the workman committed misconduct of 3(a),(i) & (j) of the Standing Order. Thereafter a show cause notice was issued against the workman asking him to submit his reply on 3.4.09 but the management was not satisfied with the reply and hence, charge sheet dated 16.5.09 was issued against the workman mentioning that his past conduct would also be taken into account in deciding the present misconduct. Accordingly a full fledged enquiry was held in compliance of the principle of natural justice. He added that the Enquiry Officer had acted in a most impartial and unbiased providing amble opportunity to the workman to cross-examine and re-examine the witnesses and allowed his evidence in support of his defence. He again said that the Enquiry Officer after conclusion of the domestic enquiry submitted his report on 17.6.09 with finding that all the 3 charges framed against the workman were established beyond doubt and the enquiry report was forwarded to the workman who on receipt of the same submitted his reply on 22.7.09. The management also found that the findings of the Enquiry Officer was based on evidence and materials on record and accordingly concurred to the findings of the Enquiry Officer. As the charges proved

against the workman were serious in nature and the management lost of faith and trust deposed upon him decided to dismiss. However, taking lenient view the workman was dismissed from service vide order dated 11.8.09. The MW.1 witness also mentioned that the workman was found guilty on misconduct on many occasion and was punished for the same; and that the workman by his letter dated 12.04.2004 apologised for his misconduct in refusing to sign holiday duty roster when it was brought to him by the Security Guard. Thereafter the workman was given final warning for his misconduct and subsequently admitted by him taking lenient view therein. Besides the workman was in the habit of not attending duty in time and in this way he failed to join his duty on 02.05.2005 after his leave and as such, show cause notice was issued to the workman on 10.05.2005 while the workman submitted his explanation. Thereafter a formal show cause notice was issued to him on 24.05.2005 and the workman submitted his explanation on 27.5.05. However the workman admitted his guilt on 4.6.2005 and accordingly punishment of breaking in service with effect from 2.5.05 to 4.5.05 and loss of pay and allowance for the period of his absence was imposed against the workman vide order dated 18.7.05 vide Exhibit-J. It is also mentioned by the management witness that Mr. A.Boarh , Asstt. Manager (operation) of NRL lodged a complaint against the workman of misbehaving his wife and the matter was enquired into and the workman was advised to use official language and not to indulge in such type of unacceptable behavior and use of bad language. The MW.1 categorically stated that the workman never complained before the management about his suffering from migraine nor he was treated in VKNRL Hospital ever for such ailment. The management witness has proved the written complaint submitted against the workman by Sri A Borah, Asstt. Manager (operation), NRL, vide Exhibit-K.

During his cross-examination the MW.1 stated that for the purpose of attending call duty they maintain roster about one month earlier and the copy of the said roster was supplied to the workman and in case of absence of any Laboratory Technician on call duty due to unavoidable circumstances they contact the remaining Laboratory Technicians for attending call duty and even in absence of Laboratory Technicians on the date of his call duty they inform the Head of Department. He also said that on the basis of reply/remarks of Laboratory Technician due to failure to attend call duty they consider the same and take appropriate action on the following day. He confirmed that on 28.3.09 Driver of the Ambulance which was sent to the residence of the workman, reported to him that the workman had refused to attend the call duty and thereafter the Head of the Laboratory Dr. B. Deuri came and performed the work of Laboratory Assistant on that day. He was one of the witnesses in the enquiry proceeding against the workman while he stated that he had no knowledge about

the behaviour and misconduct of the workman and after taking over the charge of Medical Superintendent of VKNRL Hospital he came to know that the workman was earlier suspended by the authority with effect from 23.12.03 to 26.12.03 and he could not say if the workman was placed under suspension due to the cause of the Union as a whole, but he also came to know that due to unauthorised absence of the workman from 2.5.05 to 4.5.05 the management had cut the pay of the workman. He again mentioned that there is no ENT Doctor in their hospital but there are some visiting Doctors of ENT Department on weekly basis and this system has been continuing till. However, there is no precedent regarding dismissal of the workman due to failure of the workman to attend call duty. He again said that the Enquiry Officer Mr. B.Baruah, retired IAS Officer who is a member of the Governing Body. In course of the suggestion tendered by the learned Advocate for the workman he denied that Exhibits-D,K and L are not genuine. With a view to cause harassment to the workman; and that due to his illness the workman could not attend the call duty for his punishment of dismissal is not proper and legal. He further denied that he had made some false and concocted statement in order to harass and to dismiss the workman and that the punishment imposed by the management is not proper, just and legal.

The MW.2 Sri P. Dutta, the Driver of the Ambulance of VKNRL Hospital stated that on 28.3.09 the workman was on call duty and on that day a serious patient was admitted in their hospital. While the workman was immediately called to attend the hospital and for bringing the workman the hospital Ambulance was sent to the house of the workman, and when he pushed the calling bell the wife of the workman opened the door and then he asked whether the workman was present. Then the wife of the workman informed that the workman was at home, while the workman came out he showed the call book but after going through the call book the workman refused to attend the emergency call and then MW.2 returned to the hospital.

In course of his cross-examination the MW.2 stated that since 2006 he has been working as Driver of VKNRL hospital. He mentioned that he went to the residence of the workman along with a call register of VKNRL hospital on 28.3.09 and on enquiry the wife of the workman told him that the workman had been suffering from headache and then he went to the room and saw the workman sitting on his bed tying a gamocha on his head. Then the workman told him to inform the Doctor In-charge that the workman had been suffering from illness. Accordingly he reported the matter to the Doctor In-Charge but on production of the call register the workman did not write any remarks / reply in the call register.

The MW.3, Dr. B.Deuri, the SMO, Pathology of VKNRL hospital, Numaligarh said that on 28.3.09 the workman was on call duty and on that day a serious patient

was admitted in their hospital while the workman was asked to attend the hospital to do some emergency laboratory test as per advice of the attending Doctor; and to bring the workman the hospital ambulance was sent to his house but the workman refused to come to the hospital and sent back the ambulance thereafter the MW. 3 who was not on call duty on being called by Dr. R.K. Mahanta, came to the laboratory and did the work. She also mentioned that on the next morning she informed in writing Medical Superintendent and Medical Director that the workman did not inform her about inability to come and the fact that she offered her service to the patient on that particular day as directed. She added that the act of the workman was not only inhumanitarian but dereliction of duty and disobedience the lawful order of the superior and that the workman also failed to intimate the Doctor or his department on duty. She has proved the letter written by her to the Medical Superintendent of the hospital vide Exhibit-D.

During her cross-examination the MW. 3 stated that the pathology Department of VKNRL Hospital was under her supervision at that time, and call duty register for calling any of the Technician or Doctor was sent through the driver of the Ambulance but she could not say if any remark was made on this register by the Technician in the event of his failure to attend the call. She added that since she was the In-charge of Pathology Department of VKNRL she found no such case of dismissal from service of the Technician due to his failure to attend the call duty. She also said that she could not say without going through the record if there was any ENT Doctor in their hospital during 2009 nor could say whether the workman ever refused to attend call duty. She also mentioned that on the following day of 28.3.09 the workman did not submit any letter/representation to her due to his failure to attend the call duty on 28.3.09.

7. On careful scrutiny of the evidence along with the documents adduced by both the sides it is found admitted that the workman Sri J.J.Borah had been working as Laboratory Technician in the VKNRL hospital on 28.3.09 and on that day he was on call duty was called to attend call duty, and the Ambulance of the said hospital was sent to his residence along with call duty register through the driver of the Ambulance and that the workman failed to attend the duty and thereafter the management of VKNRL started enquiry proceeding against him and show cause notice was issued against the workman framing 3 numbers of charges against him and accordingly enquiry was held and on conclusion of the enquiry, the Enquiry Officer submitted his report forwarding a copy of the same to the workman before the Management of the VKNRL which on being satisfied with the findings of the enquiry held by the Enquiry Officer according to the law, concurred to the findings of the Enquiry Officer and proposed to impose punishment. Thereafter the 2<sup>nd</sup> show cause notice was

issued against the workman allowing him an opportunity to represent himself against the proposed punishment whereupon the workman submitted his representation and the management of VKNRL, Numaligarh rejecting the representation of the workman imposed punishment of discharge from service with immediate effect.

8. The workman both in his W.S. and evidence on Affidavit took the plea that due to his illness he was not in a position to attend the duty on the fateful day i.e. on 28.3.09 and he explained about his inability to attend the call duty before the driver of the Ambulance of VKNRL to intimate the same to the SMO. From the evidence of the MW. 2 Sri P. Dutta the driver of the Ambulance of VKNRL it appears that he went to the house of the workman and showed the call book while the workman refused to come to the hospital to attend emergency duty. In his cross-examination the said MW-2 stated that on his appearance at the residence of the workman the wife of the workman told him that the workman had been suffering from headache and the workman also told him (MW-2) to inform the Doctor In-Charge that he had been suffering from illness. In course of his cross-examination the workman also admitted that on 28.3.09 the hospital authority had sent one Ambulance along with an order for attending emergency call through the driver and accordingly the driver handed over the call letter which he read but he refused to attend the duty and told the driver to intimate the Doctor that he was not feeling well. He also said that he was treated in VKNRL sometimes for migraine but he could not produce any documents in support of his statement. He further mentioned that VKNRL maintain a register of entries the name of the patients before starting treatment and in their hospital individual medical file is maintained for each and every medical employee and his family members but he has not called for the said medical file nor did he produce any document nor could he say the name of the medicine which he used. Further the workman himself stated that on the following day i.e. on 28.3.09 he attended the duty but there is nothing on record to show that he had made any remark on the call order produced before him by the driver of the Ambulance nor did he submit any written intimation to his controlling officer/ HOD informing that he could not attend the call duty on 28.3.09 due to his illness. Mr. S. Chamaria the Learned Advocate for the workman, in course of argument, mentioned that the workman in course of the enquiry proceeding mentioned that the intercom phone was not functioning on the fateful day for which he could not inform his inability to attend call duty. But the workman in course of his cross-examination before the Enquiry Officer, stated that he had mobile phone but he could not contact Dr. B.Dewri over his mobile phone inspite of his efforts. But it is not understood as to why he failed to inform the Head of Department or any other Officers of the VKNRL Hospital in writing on the following day. The workman

also filed to produce any documentary evidence to the effect that he was suffering from migraine the relevant period. The document i.e. the medical certificate/prescription submitted by the workman vide Exhibit-11, Exhibit-12, Exhibit-13 & Exhibit-14 are found not regarding the relevant period. As such, this plea of the workman is found to be not believable because the workman has been holding a responsible post of Laboratory Technician entrusted to the emergency duty and it is his duty to inform his controlling authority as to the cause of his inability to attend the duty forthwith with all sincerity.

9. Mr. Chamaria, Learned Advocate for the workman further submitted that the departmental enquiry held by the management is not proper and legal since no Presenting Officer was appointed by the management and the Enquiry Officer himself acted as Presenting Officer who cross-examined the workman which is not permitted by law. He also mentioned that the Enquiry Officer Mr. B. Baruah IAS (retired) being one of the member of the Board of Trustee of VKNRL as well as the Disciplinary Authority hold the enquiry in gross violation of principle of law as well as natural justice. As such, the findings of the Enquiry Officer is illegal & perverse & hence the action of the Management in discharging the workman from service is not according to the principles of law as well as natural justice. Learned Advocate for the workman also pointed out that the Enquiry Officer has not given sufficient opportunity of hearing to the workman which is a gross violation of the constitutional provisions & the principles of natural justice, and hence the order of discharge of the workman from service is liable to be set aside & the workman is entitled to be re-instated with back wages.

In support of his contention Mr. Chamoria, Learned Advocate for the workman relied upon the decision held in the State of Manipur & Ors. Vs. Chongtham Homendro Singh reported in 2005(3) GLT 154, wherein it was held that it is settled law that the Enquiry Officer while sitting as a judge he can not also be sitting as the prosecution to examine the witness by himself.

The Enquiry Officer cannot assume the role of judge and also the prosecution. Even there is no such provision under Rule 66 for appointment of the Presenting Officer, the simple question is that who is to present the case of the department when there is no presenting officer, therefore, absence of presenting officer will make the inquiry totally vitiated as the inquiry officer can not assume the role of the judge as well as prosecution. Mr. Chamoria also referred the case of Union of India through its Secretary, Ministry of Railway and ors...Vs.... Mohd. Naseem Siddiquit, reported in MANU/MP/0481/2004 wherein it has been observed as under:-

“ As absence of a Presenting Officer by itself will not vitiate the inquiry and it is recognized that the Inquiry Officer can put questions to any or all

witnesses to elicit the truth, the question whether an Inquiry Officer acted as a Presenting Officer, will have to be decided with reference to the manner in which the evidence is let in and recorded in the inquiry. Whether an Inquiry Officer has merely acted only as an Inquiry Officer or has also acted as a Presenting Officer depends on the facts of each case. To avoid any allegations of bias and running the risk of inquiry being declared as illegal and vitiated, the present trend appears to be to invariably appoint Presenting Officers, except in simple cases.”

Mr. Chamaria further referred the case of Ajay Kr. Paswan—Vrs.—Union of India and Ors. published in 2013 (4) GLT 802 wherein it was observed:-

“However, it needs to be mentioned here that no service Rules require appointment of enquiry officer as a matter of compulsion. The disciplinary authority itself may hold the enquiry and punish its employee. In the event, the disciplinary authority himself holds an enquiry can a question arises that there should be a Presenting Officer? So far as, the issue as to putting question to the witnesses by the enquiry officer is concerned, the same is not unknown even under the law of evidence. Section 165 of the Evidence Act deals with judge’s power to put question. The relevant part of the section goes as below:

165. Judge’s power to put question or order production.—The Judge may, in order to discover or to obtain proper proof of relevant facts, ask any question he pleases, in any form, at any time, of any witnesses or of the parties, about any fact relevant or irrelevant;.....

If the law of evidence permits a Judge to put questions to the parties or to the witnesses in order to discover or obtain proper proof of relevant facts, and this being widely used by the Judges throughout the country, it is not clear as to how an enquiry officer after being equated with a Judge in a judicial proceeding be denied that privilege. However, question shall be different if a specific case of personal bias is made out against a particular Judge. The same analogy must apply in case of disciplinary proceeding as well. After all, the very purpose of the disciplinary proceeding is to reach the bottom of the fact while affording adequate opportunities to the affected party.”

Mr. Chamaria Learned Advocate for the workman raised another point that the punishment of discharge from service imposed against the workman is disproportionate and having without any basis. In this connection Mr. Chamoria, Learned Advocate relied upon the ratio laid down in M.D.Balasaheb Desai Sahakari S.K.Ltd.—Vrs.—Kashinath Ganapati Kambale reported in (2009) 2SCC 288 wherein it was observed as :

“15. Indisputably, the Labour Court while exercising its jurisdiction under Section 11 A of the Industrial Dispute

Act was entitled to consider as to whether the punishment awarded is wholly disproportionate to the delinquent employee or not but it is well known that the discretion vested in it must be exercised in a judicious manner. The Labour Court ordinarily should not be interfere with the discretion exercised by the employer unless the same is found to be inconsistent with the provisions of a statute or otherwise perverse or unjust. It may be true that in terms of the Model Standing Order framed under the Industrial Employment Standing Orders Act, 1946, ordinarily fine for wrongful absence was to be imposed but in this regard the number of occasions on which the workman had remained on unauthorized absence was also required to be taken into consideration.

Mr. Chamaria referred the case of Sri Bhagwan Lal Arya—Vrs.—Commissioner of Police Delhi and Ors. published in AIR 2004 SC 2131, wherein it was held that although the disciplinary action initiated against the appellant was in accordance with the law, the punishment was totally disproportionate to prove misconduct of appellant, since absence of appellant on medical grounds with application for leave as well as sanction of leave could not be termed as grave misconduct or misconduct rendering him unfit for police service since appellant was not a habitual absentee, and since he had to proceed on leave under compulsion because of his grave condition of health, held that punishment of removal from service was excessive and disproportionate and ultra vires Rule 8(a) and 10 of Delhi Police ( Punishment and Appeal Rules, 1980).

Mr. S.C.Koyal, Learned Advocate for the management, on the other hand, assailing the submission of the Learned Advocate for the workman cited the ratio of the case being W.P(C) 316-/2010 of the Hon'ble Gauhati High Court decided on 04.09.2014 wherein it was observed:

“As regards non appointment of any Presenting Officer, apart from the fact that the petitioner never insisted and/or prayed for the appointment of the same, throughout the writ petition there is no averment made in respect of the said aspect. Law is well settled that if a procedural safeguard is insisted upon or is denied in a departmental enquiry, there must be specific pleading to that effect in the writ petition, coupled with specific pleading regarding prejudices because of non-compliance of the said procedure. However, Mr. Bora, learned counsel for the petitioner referring to the aforesaid decisions has submitted that the said plea is required to be entertained by this Court irrespective of whether the same was raised in the enquiry proceeding or has been raised in the writ petition in as much as the same is a point of law.”

Mr. Koyal also referred the judgment of Ajay Kumar Paswan—Vs.—Union of India & Ors reported in 2013(4)

GLT 802 which was already referred by Mr. Chamaria, Learned Advocate for the workman wherein it was held that :

“ All procedural irregularities and/or violation may not ipso facto render a decision of the disciplinary authority vitiated unless the alleged violation of procedure is a substantive one and more particularly of the nature of ‘no hearing’, ‘no opportunity’ and ‘no notice’ categories. It is true that substantive provision has normally to be complied with and substantive compliance of such provision may not be sufficient.; One line extract of all these requirements is that there should be full opportunities to the delinquent employee for presenting its defence and to cross-examine the evidence led by the prosecution side. If there is any shortcoming in this aspect, obviously the proceeding would be vitiated but mere technical violations of procedural safeguards would not be sufficient to hold a proceeding bad. This is the law as settled by the Hon'ble Supreme Court in the case of State Bank of Patiala—Vs.—S.K. Sharma reported in MANU/SC/0438/1996.”

Mr. Koyal, learned Advocate for the management relying upon the ratio of the cases as mentioned above contended that due to non-appointment of Presenting Officer will not vitiate the enquiry proceeding since the delinquent i.e. the workman was given proper notice and he participated in the proceeding. In course of enquiry, the Enquiry Officer had rightly read over and explained the charges framed against the workman who categorically made his statement without being suggested any leading question by the Enquiry Officer and the workman was given sufficient opportunity of hearing as such, there is no major procedural lapse nor any violation of principle of law as well as principle of natural justice and as the Enquiry Officer rightly submitted his findings considering all the aspects of the case as well as the materials on record. As such, the enquiry is not at all vitiated and perversed.

On careful scrutiny of the enquiry report along with all other relevant documents produced by both the parties and also having regard to the submission made by both the sides together with the ratio of the cases referred to by both the sides it is found that there is no case of “no notice”, “no hearing” and “no opportunity” nor there is any apparent illegality or irregularity in holding the departmental enquiry. The workman himself made his statement in chief without being suggested any question by the Enquiry Officer. However the Enquiry Officer cross-examined the workman on the basis of the charge sheet and as well as the documents produced before the Enquiry by the management. Further there is no whisper as to the allegation of prejudice due to non appointment of Presenting Officer in course of enquiry proceeding. The workman was also given sufficient opportunity to adduce

his evidence. He was also given sufficient scope to cross-examine the management witnesses. The workman appears to have participated in the enquiry proceeding without any complaint and as a token of his cooperation the workman put his signature on every page of the enquiry proceeding. Further the findings of the Enquiry Officer and the copies of the enquiry proceeding was duly furnished to the workman by the Disciplinary Authority after accepting the findings of the Enquiry Officer and proposed to impose punishment against the workman. While the workman submitted his representation for consideration by the Disciplinary Authority. The Disciplinary Authority, considering the nature and gravity of the offence of misconduct as well as having regard to the objective of the Establishment of VKNRL Hospital on the ideal of Swami Vivekananda in order to render medical aid to suffering humanity; and also taking into consideration the previous conduct of the workman as it reveals from the documents such as Exhibit-A by which the workman was suspended for 4 days with effect from 23.12.2003 to 26.12.2003; the Exhibit-B the document by which the workman admitted his guilt i.e. his refusal to sign Holiday Duty Roaster; the Exhibit-C the order of punishment in the form of final warning issued by the management against the workman on 21.4.04; the Exhibit-E the show-cause notice issued against the workman for remaining absent from duty without any authority with effect from 2.5.05 to 4.5.05; the Exhibit-F the expressing of the workman to the show cause notice explaining his regret that he was unable to produce the extension P/L form in time; the Exhibit-I the undertaking given by the workman dated 4.6.05 before the Medical Superintendent, VKNRL Hospital assuring not to repeat such incident in future, the Exhibit-K the complaint against the workman for using slang words to a woman submitted by Mr. A.Borah, Asstt. Manager (operation), NRL and the Exhibit-L the report on the complaint given by Mr. A.Borah, Asstt. Manager (operation) along with the remarks there on passed by Mr. S.K. Chakrabarty, the Medical Superintendent, VKNRL Hospital (Exhibit-L(1) with warning not to indulge such unacceptable adjective while in duty in future; imposed punishment of discharge of the workman from service of VKNRL Hospital.

10. In the instant case the workman has failed to establish his plea that he could not attend the call duty on 28.3.09 on medical ground rather the contention of the management that the workman refused to attend the call duty which is evident from his actions such as not making any correspondence with the hospital authority/his Head of Department nor did he make any remarks on the call register or sent any written information through the Driver of the Ambulance who was sent to his residence for picking him up. The workman also failed to represent his cause of his inability to comply with the order of his superior on 28.3.09 on the following day whereas in his evidence he categorically admitted that on 29.3.09 he

attended his duty. It is also found well established that the workman committed misconduct for similar lapse and dereliction of his duty previously on different occasions which was brought to the notice of the workman in the memorandum of charges framed against the workman by the management. The documents namely Exhibit-A,B,C,E,I,K and L proved by the Management as discussed above are sufficient evidence to support the charge of misconduct against the workman. The VKNRL is a Holly Institution established with objective to fulfill the ideal of Swami Vivekananda to render medical aid to suffering humanity, and the workman being a Laboratory Technician play a vital role in the overall functioning of the hospital in regard to the proper treatment of the patient who should render his service with honesty, sincerity and devotion and should also attend emergency duty even at the hour when he was not on duty. As such, the act of the workman done on 28.3.2009 & the acts of his previous misconduct reflected his gross negligence & responsibility & disrespect to a noble profession that to in a Hospital founded on the philosophy of Swami Vivekananda. In this connection I am inclined to rely upon the decision laid down in Hemant –vrs—Presiding Officer, Industrial Tribunal and another reported in 2014 LLR 1187 (Uttar) wherein it was held that when unauthorized and habitual absent is established there is no scope to take a lenient view of such misconduct. In 2014 LAB & IC 1740 (Mad) it was held that dismissal from service on the charge of misconduct is proper where findings of the Enquiry Officer not arbitrary or based on extraneous consideration.

In view of the above circumstances and having regard to the ratio of the cases as discussed above I am of the opinion that the charges framed against the workman were established and the domestic enquiry held against the workman is not perverse and vitiated.

11. Thus it is clear that the management has taken the right step imposing proportionate punishment to discharge the workman from his service taking into consideration the previous misconduct of the workman along with the gross misconduct committed by the workman on 28.3.09 and also having regard to the principle and ideology of the Holly Institution of VKNRL in which the workman has been holding such an important and responsible post.

12. In view of my discussion and the findings as above, I find no scope to interfere with the findings of the domestic enquiry as well as punishment of discharge imposed by the management. Accordingly this reference is decided in affirmative holding that the VKNRL Hospital Authority have adopted right steps in discharge/dismissal of Sri J. J. Borah, the workman from his service and hence, the workman is not entitled to any relief.

Given under my hand and seal of this Court on this 14<sup>th</sup> day of November, 2014.

L. C. DEY, Presiding Officer

नई दिल्ली, 23 जनवरी, 2015

**का.आ. 196.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारत पेट्रोलियम कारपोरेशन लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-2, मुंबई के पंचाट (संदर्भ संख्या 01/2013) को प्रकाशित करती है, जो केन्द्रीय सरकार को 12/01/2015 को प्राप्त हुआ था।

[सं. एल-30025/1/2015-आईआर (एम)]

जोहन तोपनो, अवर सचिव

New Delhi, the 23rd January, 2015

**S.O. 196.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 01/2013) of the Central Government Industrial Tribunal/Labour Court-2, Mumbai now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Bharat Petroleum Corporation Limited, and their workman, which was received by the Central Government on 12/01/2015.

[No. L-30025/1/2015-IR(M)]

JOHAN TOPNO, Under Secy.

#### ANNEXURE

#### BEFORE THE CENTRAL GOVERNMENT LABOUR-COURT NO.2, MUMBAI

PRESENT : K. B. KATAKE, Presiding Officer

#### APPLICATION IESO/LC-2/1 of 2013

##### Parties:

Petroleum Karmachari Navnirman Union  
137/9, Prem Sankalp  
Sher-E-Punjab Society  
Mahakali Road Andheri (E)  
Mumbai 400 093. ....Applicant

V/s.

Bharat Petroleum Corporation Ltd.  
Bharat Bhavan, 4 & 6 Currimbhoy Road  
Ballard Estate Mumbai 400 001. ....Opponent

##### APPEARANCES:

FOR THE APPLICANT : Mr. J. H. Sawant,  
Mr. Ravindra Kadu,  
Representatives.

FOR THE OPPONENT : Mr. R. S. Pai, Advocate.

Mumbai, dated the 10<sup>th</sup> September, 2014.

#### JUDGEMENT

1. This application is filed by the applicant union under Section 13-A of Industrial Employment (Standing Orders)

Act, 1946 praying to decide the question as to the applicability and interpretation of the Standing Order no.29.4 to the effect that the Opponent cannot appoint the outside person as Inquiry Officer to hold the departmental inquiry and for necessary relief in accordance with the provisions of law.

2. Opponent resisted the application by filing their Written statement at Ex-6. According to the opponent the application is not maintainable under Section 13-A of the IESO Act inasmuch as the union has already raised an industrial dispute and subsequently accepted the settlement dated 9/1/2014 wherein they have agreed to withdraw all the pending disputes including the above application. Therefore they pray to dismiss the application with costs.

3. Applicant filed application Ex-7 stating to dispose of the application for want of prosecution as the applicant is not interested in pursuing the application. In the circumstances, application deserves to be dismissed for want of prosecution. Hence the order:

#### ORDER

The application stands dismissed with no order as to cost.

Date: 10/09/2014

K. B. KATAKE, Presiding Officer

नई दिल्ली, 23 जनवरी, 2015

**का.आ. 197.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार लाइफ इन्शुरन्स कारपोरेशन ऑफ इंडिया के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, चैन्नई के पंचाट (संदर्भ संख्या 125/2014) को प्रकाशित करती है, जो केन्द्रीय सरकार को 12/01/2015 को प्राप्त हुआ था।

[सं. एल-17012/129/2013-आईआर (एम)]

जोहन तोपनो, अवर सचिव

New Delhi, the 23rd January, 2015

**S.O. 197.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 125/2014) of the Central Government Industrial Tribunal/Labour Court, Chennai now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Life Insurance Corporation of India, and their workman, which was received by the Central Government on 12/01/2015.

[No. L-17012/129/2013-IR(M)]

JOHAN TOPNO, Under Secy.

**ANNEXURE**

**BEFORE THE CENTRAL GOVERNMENT  
INDUSTRIAL TRIBUNAL-CUM-LABOUR  
COURT, CHENNAI**

Tuesday, the 23<sup>rd</sup> December, 2014

**Present :** K. P. PRASANNA KUMARI, Presiding Officer  
**Industrial Dispute No. 125/2014**

(In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947(14 of 1947), between the Management of Life Insurance Corporation of India and their workman)

**BETWEEN:**

Sri M. Selva Sathish : 1<sup>st</sup> Party/Petitioner

**AND**

The Zonal Manager : 2<sup>nd</sup> Party/Respondent  
LIC of India,  
Chennai Division-I  
102, Anna Salai  
Chennai-600002

**Appearance:**

For the 1<sup>st</sup> Party/Petitioner : None

For the 2<sup>nd</sup> Party/Respondent : None

**AWARD**

The Central Government, Ministry of Labour & Employment vide its Order No. L-17012/129/2014-IR (M) dated 05.12.2014 referred the following Industrial Dispute to this Tribunal for adjudication.

The schedule mentioned in that order is :

“Whether the action of the management of Life Insurance Corporation of India in terminating the services of Sri M. Selva Sathish w.e.f. 31.08.2013 is legal and justified? If not, to what relief the workman concerned is entitled to?”

2. The petitioner herein has filed ID 81/2014 before this Tribunal directly challenging the order of termination against him. The petitioner does not want to proceed with this reference in view of this. He has endorsed stating that he is not proceeding with the reference because of the pendency of the other case. Therefore the reference is closed.

An award is passed accordingly.

K. P. PRASANNA KUMARI, Presiding Officer

**Witnesses Examined:**

For the 1<sup>st</sup> Party/Petitioner : None

For the 2<sup>nd</sup> Party/Management : None

**Documents marked:****On the petitioner's side**

Ex.No.	Date	Description
	N/A	

**On the Management's side**

Ex.No.	Date	Description
	N/A	

नई दिल्ली, 23 जनवरी, 2015

**का.आ. 198.—**औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार लाइफ इशुरेन्स कारपोरेशन ऑफ इंडिया के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, चैनई के पंचाट (संदर्भ संख्या 124/2014) को प्रकाशित करती है, जो केन्द्रीय सरकार को 12/01/2015 को प्राप्त हुआ था।

[सं. एल-17012/135/2014-आईआर (एम)]

जोहन तोपनो, अवर सचिव

New Delhi, the 23rd January, 2015

**S.O. 198.—**In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 124/2014) of the Central Government Industrial Tribunal/Labour Court, Chennai now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of the Life Insurance Corporation of India, and their workman, which was received by the Central Government on 12/01/2015.

[No. L-17012/135/2014-IR(M)]

JOHAN TOPNO, Under Secy.

**ANNEXURE**

**BEFORE THE CENTRAL GOVERNMENT  
INDUSTRIAL TRIBUNAL-CUM-LABOUR  
COURT, CHENNAI**

Tuesday, the 23<sup>rd</sup> December, 2014

**Present :** K. P. PRASANNA KUMARI, Presiding Officer

**Industrial Dispute No. 124/2014**

(In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947(14 of 1947), between the Management of Life Insurance Corporation of India and their workman)

**BETWEEN:**

Sri T. Kalaiarasan : 1<sup>st</sup> Party/Petitioner

**AND**

The Zonal Manager : 2<sup>nd</sup> Party/Respondent  
 LIC of India,  
 Chennai Division-I  
 102, Anna Salai  
 Chennai-600002

**Appearance:**

For the 1<sup>st</sup> Party/Petitioner : None  
 For the 2<sup>nd</sup> Party/Respondent : None

**AWARD**

The Central Government, Ministry of Labour & Employment vide its Order No. L-17012/135/2014-IR (M) dated 05.12.2014 referred the following Industrial Dispute to this Tribunal for adjudication.

The schedule mentioned in that order is :

“Whether the action of the management of Life Insurance Corporation of India in terminating the services of Sri T. Kalaiarasan w.e.f. 31.08.2013 is legal and justified? If not, to what relief the workman concerned is entitled to?”

2. The petitioner herein has filed ID 86/2014 before this Tribunal directly challenging the order of termination against him. The petitioner does not want to proceed with this reference in view of this. He has endorsed stating that he is not proceeding with the reference because of the pendency of the other case. Therefore the reference is closed.

An award is passed accordingly.

K. P. PRASANNA KUMARI, Presiding Officer

**Witnesses Examined:**

For the 1<sup>st</sup> Party/Petitioner : None

For the 2<sup>nd</sup> Party/Management : None

**Documents marked:****On the petitioner's side**

Ex.No.	Date	Description
	N/A	

**On the Management's side**

Ex.No.	Date	Description
	N/A	

नई दिल्ली, 23 जनवरी, 2015

**का.आ. 199.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 17 के अनुसरण में केन्द्रीय सरकार लाइफ इन्शोरेन्स कारपोरेशन ऑफ इंडिया के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय

सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, चैनई के पंचाट (संदर्भ संख्या 123/2014) को प्रकाशित करती है, जो केन्द्रीय सरकार को 12/01/2015 को प्राप्त हुआ था।

[सं. एल-17012/137/2014-आईआर (एम)]

जोहन तोपनो, अवर सचिव

New Delhi, the 23rd January, 2015

**S.O. 199.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 123/2014) of the Central Government Industrial Tribunal/Labour Court, Chennai now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of the Life Insurance Corporation of India, and their workman, which was received by the Central Government on 12/01/2015.

[No. L-17012/137/2014-IR(M)]

JOHAN TOPNO, Under Secy.

**ANNEXURE**

**BEFORE THE CENTRAL GOVERNMENT  
INDUSTRIAL TRIBUNAL-CUM-LABOUR  
COURT, CHENNAI**

Tuesday, the 23<sup>rd</sup> December, 2014

**Present :** K. P. PRASANNA KUMARI, Presiding Officer

**Industrial Dispute No. 123/2014**

(In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947(14 of 1947), between the Management of Life Insurance Corporation of India and their workman)

**BETWEEN:**

Sri S. Vinod Kumar : 1<sup>st</sup> Party/Petitioner

**AND**

The Zonal Manager : 2<sup>nd</sup> Party/Respondent  
 LIC of India,  
 Chennai Division-I  
 102, Anna Salai  
 Chennai-600002

**Appearance :**

For the 1<sup>st</sup> Party/Petitioner : None

For the 2<sup>nd</sup> Party/Respondent : None

**AWARD**

The Central Government, Ministry of Labour & Employment vide its Order No. L-17012/137/2014-IR (M) dated 05.12.2014 referred the following Industrial Dispute to this Tribunal for adjudication.

The schedule mentioned in that order is :

“Whether the action of the management of Life Insurance Corporation of India in terminating the services of Sri S. Vinoth Kumar w.e.f. 31.08.2013 is legal and justified? If not, to what relief the workman concerned is entitled to?”

2. The petitioner herein has filed ID 85/2014 before this Tribunal directly, challenging the order of termination against him. The petitioner does not want to proceed with this reference in view of this. He has endorsed stating that he is not proceeding with the reference because of the pendency of the other case. Therefore the reference is closed.

An award is passed accordingly.

K. P. PRASANNA KUMARI, Presiding Officer

**Witnesses Examined:**

For the 1<sup>st</sup> Party/Petitioner : None

For the 2<sup>nd</sup> Party/Management : None

**Documents marked:**

**On the petitioner's side**

Ex.No.	Date	Description
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N/A

**On the Management's side**

Ex.No.	Date	Description
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N/A

नई दिल्ली, 23 जनवरी, 2015

**का.आ. 200.—**औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार हिंदुस्तान पेट्रोलियम कारपोरेशन लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय नं.-1, मुंबई के पंचाट (संदर्भ संख्या 13/2003) को प्रकाशित करती है, जो केन्द्रीय सरकार को 12/01/2015 को प्राप्त हुआ था।

[सं. एल-30015/5/2003-आईआर (एम)]

जोहन तोपनो, अवर सचिव

New Delhi, the 23rd January, 2015

**S.O. 200.—**In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 13/2003) of the Central Government Industrial Tribunal/Labour Court No.-1, Mumbai now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of the Hindustan Petroleum Corporation Ltd., and their workman, which was received by the Central Government on 12/01/2015.

[No. L-30015/5/2003-IR(M)]

JOHAN TOPNO, Under Secy.

**ANNEXURE**

**BEFORE THE CENTRAL GOVERNMENT  
INDUSTRIAL TRIBUNAL NO.1,  
MUMBAI**

**Present :** Justice S. P. MEHROTRA, Presiding Officer

**REFERENCE NO.CGIT-1/13 OF 2003**

**Parties:** Employers in relation to the management of Hindustan Petroleum Corporation Ltd.

**And**

Their workmen

**Appearances :**

For the first party/ : Ms. Nandini Menon, Adv.

Management : Ms. Dipti Kucherla, Law Officer

For the second party/ : Mr. R. D. Bhatt, Adv.  
workman

State : Maharashtra

Mumbai, dated the 28th day of November, 2014

**AWARD**

1. The present Reference has been made by the Central Government by its order dated 7.3.2003 passed in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947. The terms of Reference as per the Schedule to the said order are as under:

“Whether the demand of Petroleum Employees' Union for declaring that the workmen as mentioned in exhibit A (attached) are the regular employees of Hindustan Petroleum Corporation Ltd. Justified? If so, to what relief the concerned workmen are entitled?”

2. Pleadings were exchanged between the parties. Evidence on behalf of the second party/Union concluded. Thereafter, evidence on behalf of the first party/ Management commenced. The case is being fixed for cross-examination of the Management Witness MW-1.

3. Today, when the case is taken up, Shri R.D. Bhatt, learned counsel for the second party/Union is present. Ms. Dipti Kucherla stating herself to be Law Officer in Hindustan Petroleum Corporation Ltd. (first party/ Management) is also present.

4. A joint application on behalf of the first party/ Management and the second party/Union has been filed today. The application has been signed by Shri R. D. Bhatt, learned counsel for the second party/Union as well as by Ms. Nandini Menon, learned counsel for the first party/ Management. The application also bears the signature of Mr. K. S. Shetty, Head – HR (Marketing) of the first party/

Management and Shri D.N. Vidhate, Vice-President of the second party/Union.

5. It is, inter-alia, stated in the application that the parties to the present Reference have entered into a Settlement by consent of and with all the parties therein. It is, inter-alia, prayed in the application that the Reference may be disposed of and an Award be passed in terms thereof. Along with the application, Consent Terms signed by the learned counsel for both the parties as well as by the aforesaid Mr. K. S. Shetty and the aforesaid Mr. D. N. Vidhate, have been filed.

6. Memorandum of Understanding annexed as Exhibit A-1 to the Consent Terms, as mentioned in paragraph 1 of the Consent Terms, has also been filed along with the Consent Terms.

7. Mr. R. D. Bhatt, learned counsel for the second party/Union and Ms. Dipti Kucherla, Law Officer of the first party/Management state that in view of the averments made in the aforesaid application, the Reference be disposed of in terms of the Settlement as contained in the Consent Terms and Memorandum of Understanding, filed along with the aforesaid application, and the Award be passed in terms thereof.

8. Having regard to the averments made in the aforesaid application and keeping in view the statement made, as mentioned above, on behalf of the second party/Union and the first party/Management, Industrial Dispute forming subject-matter of the Reference is decided in terms of the Settlement as contained in the Consent Terms and Memorandum of Understanding filed along with the aforesaid application.

9. The Reference is, therefore, answered by stating that Industrial Dispute forming the subject- matter of the Reference is decided in terms of Settlement as contained in the Consent Terms and Memorandum of Understanding filed along with the aforesaid application.

10. Award is passed accordingly. The Consent Terms and Memorandum of Understanding filed along with the aforesaid application, will form part of the Award.

Justice S. P. MEHROTRA, Presiding Officer

**BEFORE THE CENTRAL GOVERNMENT  
INDUSTRIAL TRIBUNAL NO.1  
MUMBAI**

**REFERENCE NO. CGIT -1/13 of 2003**

**BETWEEN:**

EMPLOYERS IN RELATION TO  
THE MANAGEMENT OF  
HINDUSTAN PETROLEUM  
CORPORATION LTD.

...FIRST PARTY

**AND**

THEIR WORKMEN REPRESENTED  
BY PETROLEUM EMPLOYEES'  
UNION ...SECOND PARTY

**CONSENT TERMS**

May it please the Hon'ble Tribunal:

1. The parties to the above reference respectfully submit that the parties have arrived at an amicable settlement in respect of the 24 workmen represented by the 2<sup>nd</sup> party covered in the instant reference and the terms of which are annexed hereto and marked as Exhibit A1.

2. The 2<sup>nd</sup> Party is filing the authority granted to them by these 24 workmen to sign these consent terms and get the Reference disposed of in terms thereof.

3. The first party has no employer-employee nexus or relationship with the 24 workmen represented through the second party and is thus not liable under any law, in any respect to provide work and payment of any compensation to them. However, in order to amicably resolve the present dispute expeditiously in the large interest of all concerned, including the first party and the 24 contract workmen represented through the second party, in principle it has been agreed to continue the services of these 24 workmen through contractor(s) for performing the contractual obligation at USAR LPG Bottling Plant of First Party, till attaining the age of their superannuation, save and except misconduct. The second party as' well as the 24 Contract workmen, on whose behalf the second party had espoused the case, agree to withdraw their claim of regularization in connection with the pending reference case CGIT-I 13/2003 and to relinquish the claim of regularization on behalf of the workmen.

4. The First Party after adhering to the purchase procedures of the Corporation would appoint independent contractors and agree to specify in the tender conditions the mutual agreed terms for continuation of these 24 contract workmen under the respective contractors in various handling jobs/incidental operational activities inside the Plant for performing the contractual obligations as detailed in the above mentioned Exhibit.

5. In the event of indiscipline or misbehavior or any misconduct committed by these 24 workmen, the respective contractor engaged at the relevant point of time, would have the right to take disciplinary action including discontinuation of these workmen, after adhering to due process of law.

6. It is agreed that the 24 contract workmen would be paid an additional fixed allowance of Rs. 7020/- p.m. over and above the applicable minimum wages payable in their respective category. The aforesaid fixed allowance would be revised on 1st January of each calendar year and incremental revision @ 3% of such additional allowance

paid as of 31st December of the previous calendar year, would be paid to the contract workmen which would be deemed to be the revised fixed additional allowance for the particular calendar year, subject to minimum attendance of 180 days during the preceding year.

7. It is also mutually agreed that irrespective of the fact of the respective contractor having their independent code under PF, the contribution in respect of these 65 contract workmen would be deposited through the Corporation's separate code allotted for the contract labourers engaged across Corporation's locations.

8. It is also agreed upon that consequent to the additional fixed allowance of Rs. 7020/- per month, the 65 contract workmen would be entitled to receive applicable bonus amount @ 8.33% of Rs. 3,500/- (bonus ceiling limit for calculation, as applicable), irrespective of the fact that the gross wages exceeds Rs. 10,000/- per month or the limit as declared by the Appropriate Authority under Payment of Bonus Act, 1965 from time-to-time.

9. It was also agreed upon that since the location USAR LPG Bottling Plant does not fall within notified area under ESI Act, a comprehensive Workmen Compensation Policy as well as Medical Insurance Policy would be taken by the First Party as a Principal Employer on behalf of these workmen for covering them along with their dependent family members (dependent parents, spouse & children) whereby the Contractor, as the Employer would contribute an amount equivalent to 4.75% of the wages payable to these workmen and the workmen would contribute 1.75% of their wages which would be deducted from the wages payable to the workmen towards coverage under Comprehensive Medical Insurance Scheme.

10. It is also agreed that upon attaining the age of superannuation (60 years), the applicable gratuity, would be disbursed to the respective contract workmen, for their services through various contractors in the Corporation's location. For the purpose of calculating gratuity, the date of joining the services would be reckoned effective the date of filing of the Writ Petition before the Mumbai High Court as detailed in Exhibit-A of the Settlement.

11. The second party as well as the 24 contract workmen agree that in future no dispute/claim/demand of whatsoever nature, monetary or non-monetary shall be raised by them or their member/workmen before any court of law under issue of permanency/regularization in the services of the Corporation (first party).

12. The 24 contract workmen also agree and undertake to irretrievably forgo their claim for regularization/ permanency in the services of the Corporation and/or wages at par with regular workmen with consequential benefits.

13. The 24 contract workmen agree and accept that with these consent terms all their claims in respect of their

employment have been resolved and the said workmen accept the same.

14. The 24 contract workmen and the Petroleum Employees' Union agree to indemnify and keep indemnified and save harmless the First Party, its Directors and Officers from any claim of nature whatsoever from any of these workmen against the First Party.

15. The second party as well as the 24 contract workmen covered under the present case shall not cite the present settlement and consent terms, arrived at between the parties under the present facts and circumstances of the case in order to amicably resolve the matter, before any competent court of law/tribunal/authority for seeking wages and benefits at par with regular employees or otherwise, for present or in future at any stage or in any proceedings involving any other employee/s or contract employees.

16. It is agreed and understood by and between the parties that the 24 contract workmen, to whom the benefit of continuity as contract workmen under the respective contractors at USAR LPG Bottling Plant of the First Party, has been extended, shall not resort to any agitation, stage demonstration/coercive picketing or indulge in any other act against the First Party or its officers affecting the working of the First Party in support of their any or alleged demands of permanency/regularization in the employment of the Corporation/parity of wages along with regular workmen of the First Party or whatsoever nature and indeed no such demand shall hereinafter be made in future.

17. The financial benefit arising out of settlements would be paid effective 1/4/2011 onwards. However, while calculating the arrears, the incremental revision @ 3% of additional fixed allowance would not be calculated and such incremental revision would be payable with prospective effect, i.e. effective January 2015 onwards.

18. It is further mutually agreed upon that the benefit accruing out of the settlements entered between the first party and 24 contract workmen shall be binding as to full and final settlement of all claims/demands of whatsoever nature as may be conceived under any law arising out of their engagement/non-engagement in the establishment of the First Party through the contractors or otherwise.

19. It is therefore, prayed that an Award be passed in terms of the consent terms. In the circumstances of the case, there shall be no order as to costs.

Mumbai

Dated : This 28 day of November, 2014

-Sd- Illegible

Advocate of First Party

For and on behalf of

K. S. SHETTY, Head-Hr (Mktg.)  
Hindustan Petroleum Corp. Ltd.  
First Party

-Sd- Illegible	(8)	Shri Chandrakant N. Shinde, Son of Shri Nathuram Shinde, aged about 39 years (DOB : 01/12/1975), resident of Usar, Alibaug, Raigad, Maharashtra- 402203.	
Advocate of Second Party	For and on behalf of -Sd- Illegible Second Party	(9)	Shri Ramkrishna R. Shinde, Son of Shri Ragho Shinde, aged about 51 years (DOB : 09/10/1963), resident of 121, Usar, Mauje Khanav Mauje Mulakanav, Velavalni, Khanav, Alibaug, Raigad, Maharashtra - 402204.
Petroleum Employees' Union		(10)	Shri Harishchandra K. Shinde, Son of Shri Kalu Shide, aged about 52 years (DOB : 20/04/1962), resident of 88, Usar, Mauje Khanav Mauje Mulakanav, Velavalni, Khanav, Alibaug, Raigad, Maharashtra - 402204.
Memorandum of Understanding dated 20/11/2014 arrived between the Management of Hindustan Petroleum Corporation Limited and the 24 contract workmen engaged in Security activities at USAR LPG Bottling Plant.		(11)	Shri Jaywant K. Varde, Son of Shri Kashinath Varde, aged about 40 years (DOB : 10/08/1974), resident of 33-A-1, Mali Bherase, Mauje Belavalni, Betalvadi Mali Bherase, Velhavalni, Alibaug, Raigad, Maharashtra - 402204.
<b>Present :</b>		(12)	Shri Anil N. Kavale, Son of Shri Narayan Kavale, aged about 42 years (DOB : 01/06/1972), resident of 43, Mali Bherase, Mauje Belavalni, Betalvadi Mali Bherase, Velhavalni, Alibaug, Raigad, Maharashtra- 402204.
Representing Management of Hindustan Petroleum Corporation Limited:		(13)	Shri Dilip R. Patil, Son of Shri Ramchandra Patil, aged about 39 years (DOB : 05/12/1975), resident of 43, Velavalni, Nagaon, Alibaug, Raigad, Maharashtra - 402204.
(1) Shri K. S. Shetty, Head - HR (Mktg.)		(14)	Shri Mangesh B. Thakur, Son of Shri Balu Thakur, aged about 39 years (DOB : 16/06/1977), resident at Khanav, Usar, Alibaug Khanav, Chaul, Raigad, Alibaug, Maharashtra - 402203.
(2) Shri B. N. Rao, Sr. Manager - HR, West Zone		(15)	Shri. Ramchandra C. Topale, Son of Shri Changu Topale, aged about 47 years (DOB : 13/03/1967), resident of 43, Khanav, Usar, Raigad, Maharashtra - 402203.
(3) Shri Sunil Sanas, Sr. Manager HR (Mktg.), HQO		(16)	Shri. Vinod G. Raul, Son of Shri Gajanan Raul, aged about 42 years (DOB : 01/06/1972), resident of 41, Mali, Bherase, Mauje Belavalni, Betalvadi, Velhavalni, Alibaug, Raigad, Maharashtra - 402203.
(4) Shri Ashutosh Awade, Sr. Plant Manager, USAR LPG Plant		(17)	Shri. Ramakant N. Shinde, Son of Shri Nathuram Shinde, aged about 43 years (DOB : 26/01/1971), resident of 53 A , Usar, Alibaug, Raigad, Maharashtra-402203.
(5) Shri D. Mukherjee, Manager (I/C) HR Legal Cell, PH-7		(18)	Shri. Suhas M. Gurav, Son of Shri Madhukar Gurav, aged about 37 years (DOB : 25/07/1977), resident of 53 A, Nagaon (Hatale), Alibaug, Raigad, Maharashtra-402204.
(6) Shri Mahendra Singh, Dy. Manager-Law, HR Legal Cell, PH-4		(19)	Shri. Anant K. Karmat, Son of Shri Kashinath Karmat, aged about 47 years (DOB : 19/06/1967), resident of H. No. 594, Barud Ali, Nagaon, Alibaug, Raigad, Maharashtra-402204.
The contract workmen engaged in Security Activity:		(20)	Shri. Kishor B. Shelke, Son of Shri Baraku Shelke, aged about 54 years (DOB : 16/08/1962), resident of Usar, Alibaug, Raigad, Maharashtra-402203.
(1) Shri Vasant Narayan Gondhali, Son of Shri Narayan Gondhali, aged about 45 years (DOB : 01.06.1969), resident of 43-Ba, Khanav, 1 Mauje Khanav Mauje, Mudakanav Velavalni, Khanav, Alibaug, Raigad, Maharashtra-402204.			
(2) Shri Sadanand R. Patil, Son of Shri Ramchandra Patil, aged about 42 years (DOB 01.06.1972), resident of Velavalni, Nagaon, Nagaon Alibaug, Raigad, Maharashtra-402204.			
(3) Shri Umesh Janardan Thale, Son of Shri Janardan Thale, aged about 40 years (DOB : 01/09/1974), resident of 80, E Velavalni, Nagaon, Nagaon Alibaug, Raigad, Maharashtra - 402204.			
(4) Shri Prashant H. Mhatre, Son of Shri Harishchandra Mhatre, aged about 35 years (DOB: 01/02/1979), resident of Tal Kawir, Bamangaon, Raigad, Maharashtra-402204.			
(5) Shri Sudhir D. Rane, Son of Shri Dattatreya Rane, aged about 42 years (DOB: 21/05/1972), resident of Tal Kawir, Bamangaon, Raigad, Maharashtra-402204.			
(6) Shri Balkrishna N. Rane, Son of Shri Narayan Rane, aged about 44 years (DOB: 19/01/1970), resident of Tal Kawir, Bamangaon, Raigad, Maharashtra-402204.			
(7) Shri Anil V. Varsolkar, Son of Shri Vasant Varsolkar, aged about 35 years (DOB: 21/12/1979), resident of 121, Vadhav Budruk, Velhavalni, Raigad, Maharashtra-402204.			

- (21) Shri. Vinod E. Bhagat, Son of Shri Eknath Bhagat, aged about 41 years (DOB : 14/07/1973), resident of Behind Prathmik Shala, Bamangaon, Alibaug, Raigad, Maharashtra-402204.
- (22) Shri. Sanjay D. Shelke, Son of Shri Dattatrey Shelke, aged about 51 years (DOB : 18/11/1963), resident of H. No. 636 A, Sahan, Kavir 2, Alibaug, Raigad, Maharashtra-402204.
- (23) Shri Indrajit R. Magar, Son of Shri Ramesh Magar, aged about 38 years (DOB : 06.06.1976), resident of 69, Sahanagothi, Sahan, Thakurvadi, Kavir, Alibaug, Raigad, Maharashtra-402204.
- (24) Shri Rajendra G. Mankar, Son of Shri Gajanan Mankar, aged about 41 years (DOB : 10/11/1973), resident of Bamangaon, Alibaug, Raigad, Maharashtra- 402204.

#### **Short recital**

- 1.1. Petroleum Employees Union had filed WP No. 4720 of 1999 before Hon'ble Bombay High Court on behalf of 31 Contract Labourers engaged in Security activity at USAR LPG Bottling Plant for regularization into the services of the Corporation. Vide Interim Order dated 27/03/2000 in WP No. 4720 of 1999, Hon'ble High Court admitted the Petition for hearing and restrained HPCL from terminating the services of the workmen as Contract Labour till further orders. Further, Vide Order dated 24/01/2003, Hon'ble Bombay High Court disposed of WP No. 4720 of 1999 directing the Petitioner to approach the Appropriate Government for referring the dispute for adjudication. Hon'ble Court also directed that in the event of dispute between the petitioner and respondent Corporation being referred by the appropriate Government, the petitioner herein shall be at liberty to apply to the concerned Industrial Tribunal for continuation of the interim order and if such an application is made before the concerned Industrial Tribunal, appropriate order shall be passed after hearing the parties.
- 1.2. Subsequently, Petroleum Employees Union raised an Industrial Dispute before Assistant Labour Commissioner (Central), Mumbai with regard to their demand of regularization. Upon failure of conciliation proceeding, Conciliation Authority submitted Report of Failure of Conciliation to Ministry of Labour, Government of India, New Delhi. Thereafter, Government of India, Ministry of Labour, vide notification No. L-30015/5/2003-IR(M) dated 07/03/2003, referred the matter for adjudication before the CGIT Mumbai which has been numbered as CGIT-1/13 of 2003. The terms of the reference are as under:
- “Whether the demand of Petroleum Employee's Union for declaring that the workmen as mentioned in Exhibit A (attached) are the regular employees of

Hindustan Petroleum Corporation Ltd. Justified? If so, to what relief the concerned workmen are entitled?”

3. Out of the 31 contract workmen engaged in Security Activity at USAR LPG Bottling Plant, covered in the said WP No. 4720 of 1999 and ID Case No. CGIT-I/ 13 of 2003, 02 contract workmen are expired and 05 contract workmen have left the jobs on their own accord and at present only 24 contract workmen are continuing under the contractor.
4. The Petroleum Employees Union espousing the cause of the aforesaid contract workmen as well as the contract workmen themselves have in the interim during pendency of the above CGIT case expressed their willingness of arriving at an out of Court Settlement and accordingly submitted a Charter of Demands before the Corporation. subsequently, a series of discussions were held between the management and the aforesaid Contract employees and in furtherance of the same execute this settlement and in principle have accepted the terms of the settlement applicable to these 24 contract workmen engaged by the contractors at USAR LPG bottling Plant, in security services and to minimise litigation on the subject, so as to maintain Industrial peace and harmony in the establishments of the Corporation. The terms and conditions of the settlement arrived at between the parties are recorded hereunder :

#### **TERMS AND CONDITIONS OF THE SETTLEMENT APPLICABILITY:**

The terms of the settlement would be applicable to the signatories of the present settlement and the 24 contract workmen as mentioned above, engaged in security services at USAR LPG Bottling Plant & presently working under the Contractor.

#### **TERMS:**

1. The Corporation has no employer-employee nexus or relationship with the 24 contract workmen, who are signatories to the present settlement and is thus not liable under any law, in any respect to provide work and payment of any compensation to them. However, in order to amicably resolve the present dispute expeditiously in the large interest of all concerned, including the Corporation and the 24 contract workmen represented through the Union, in principle, have agreed to continue the services of these 24 contract workmen through contractor(s) for performing the contractual obligation at the Corporation' establishment at USAR LPG Bottling Plant, till attaining the age of their superannuation i.e. 60 years, save and except misconduct. Petroleum Employees' Union as well as the 24 Contract Workmen, on whose behalf the Union had espoused the case, agree to withdraw their claim of regularization in connection with the pending reference case CGIT-I/13/2003, and to relinquish the claim of regularization on behalf of the Contract Workmen.

2. The Corporation, after adhering to the purchase procedures of the Corporation, would appoint independent contractors and agree to specify in the tender conditions, the mutually agreed terms for continuation of these 24 contract workmen under the respective contractors at its establishment at USAR LPG Bottling Plant till attaining the age of superannuation. In the event of indiscipline or misbehavior or any misconduct committed by these 24 workmen, the respective contractor engaged at the relevant point of time, would have the right to take disciplinary action including discontinuation of these workmen, after adhering to due process of law.

3. It is agreed that said 24 contract labourers who are at present being engaged by security contractor for performing security jobs at the USAR LPG Plant, shall be engaged by the contractor(s) who will be awarded contract for performing various handling jobs/incidental operational activities inside the Plant as per job requirement at the Plant. Accordingly, the said 24 contract labourers would be paid applicable minimum wages of unskilled category and other applicable statutory benefits i.e. PF, Bonus and leave with wages by the concerned contractor(s) and they shall not be demand any allowance/wages which are applicable to DGR Security guards and being presently paid to them. It is also agreed that till the time, the said 24 contract labourers are engaged by one/different contractor(s) in handling activities / incidental operational activities at the Plant, they will continue to perform the jobs under the security contractor as earlier and till such time they will continue to be paid DGR wages in accordance with DGR circular/guidelines.

4. It is agreed that the 24 contract workmen would be paid an additional fixed allowance of Rs. 7,020/- p.m. over and above the applicable minimum wages payable in their respective category. The applicable statutory payments viz. EPF, leave with wages etc. would also be payable with regard to the aforesaid additional fixed allowance. The aforesaid fixed allowance would be revised on 1<sup>st</sup> January of each calendar year and incremental revision @ 3% of such additional allowance paid as of 31<sup>st</sup> December of the previous calendar year, would be paid to the contract workmen which would be deemed to be the revised fixed additional allowance for the particular calendar year, subject to minimum attendance of 180 days during the preceding year. In the event of absenteeism of any contract workman, the aforesaid additional fixed allowance will be calculated on pro-rata basis while determining the monthly additional fixed allowance. It is also clarified that the additional fixed allowance would be payable over & above the applicable minimum wages as declared by the appropriate government (State/Central whichever is higher) payable for their respective category of scheduled employment and in the event, if the Corporation desires to implement the concept of payment of fair wages for the contract workmen in future, the benefits of the same would not be extended to these

contract workmen covered under the present settlement.

5. It is also mutually agreed that irrespective of the contractor having their independent code under PF, the contribution in respect of these 24 workmen would be deposited through the Corporation's separate code allotted for the contract labourers engaged across Corporation's locations.

6. It is agreed that upon attaining the age of superannuation (60 years), the applicable gratuity, would be disbursed to the respective contract workmen, for their services through various contractors. for the purpose of calculating gratuity, the date of joining the services would be reckoned effective the date of filing of the Writ Petition No. 4720 of 1999 before the Bombay High Court referred to above, in which the respective workmen were covered as detailed in targent I.

7. It is also agreed upon that consequent to the additional fixed allowance of Rs. 7020/- per month, the 24 contract workmen would be entitled to receive applicable bonus amount @ 8.33% of Rs. 3,500/- (bonus ceiling limit for calculation, as applicable), irrespective of the fact that the gross wages exceeds Rs. 10,000/- per month or the limit as declared by the Appropriate Authority under Payment of Bonus Act, 1965 from time to time.

8. It was also agreed upon that since the location USAR LPG Bottling Plant does not fall within notified area under ESI Act, a comprehensive Workmen Compensation Policy as well as Medical Insurance Policy would be taken by the Corporation as a Principal Employer on behalf of these workmen for covering them along with their dependent family members (dependent parents, spouse & children) whereby the Contractor, as the Employer would contribute an amount equivalent to 4.75% of the wages payable to these workmen and the workmen would contribute 1.75% of their wages which would be deducted from the wages payable to the workmen towards coverage under Comprehensive Medical Insurance Scheme.

9. The 24 contract workmen also agrees to forgo their claim for regularization/permanency in the services of the Corporation and / or wages at par with regular workmen with consequential benefits.

10. The 24 contract workmen agree that in future no dispute/claim/demand of whatsoever nature, monetary or non-monetary shall be raised by them or through any other Union espousing their cause before any court of law under issue of permanency/regularization in the services of the Corporation.

11. The 24 contract workmen covered under the present cases shall not cite this settlement arrived at between the parties under the present facts ana circumstances of the case in order to amicably resolve the matter, before any competent court of law/tribunal/authority for seeking wages and benefits at par with regular employees or otherwise, for present or in future at any stage.

12. It is agreed and understood by and between the parties that the 24 contract workmen, to whom the benefit of continuity as contract workmen under the respective contractors at USAR LPG Bottling Plant, has been extended, shall not resort to any agitation, stage demonstration/coercive picketing or indulge in any other act against the Corporation or its officers affecting the working of the Corporation in support of their any or alleged demands of permanency/regularization in the employment of the Corporation/parity of wages along with regular workmen of the Corporation or whatsoever nature and indeed no such demand shall hereinafter be made in future.

13. It is further mutually agreed upon that the benefit accruing out of the present settlement shall be binding as to full and final settlement of all claims/demands of whatsoever nature as may be conceived under any law arising out of their engagement/non-engagement in the establishment of the Corporation through the contractors or otherwise.

14. The financial benefit arising out of this settlement would be paid effective 1/4/2011 onwards. However, while calculating the arrears, the incremental revision @ 3% of additional fixed allowance would not be calculated and such incremental revision would be payable with prospective effect, i.e. effective January, 2015 onwards.

15. It has been agreed upon that both the parties would implement the terms of understanding in true spirit and the present MOU would be filed before Hon'ble High Court/Tribunal for disposal of the pending case in terms of this MOU.

This Memorandum of understanding signed at USAR on 20th day of November, 2014.

**For and on behalf of  
HPCL**

-Sd- Illegible	-Sd- Illegible
Shri K. S. Shetty, Head-HR (Mktg.)	1. Shri Vasant Narayan Gondhal
-Sd- Illegible	-Sd- Illegible
Shri B. N. Rao, Sr. Mgr. HR-WZ	2. Shri Sadanand R. Patil
-Sd- Illegible	-Sd- Illegible
Shri Sunil Sanas, Sr. Manager HR (Mktg.)	3. Shri Umesh Janardan Thale
-Sd- Illegible	-Sd- Illegible
Shri Ashutosh Awade, Sr. Plant Manager	4. Shri Prashant H. Mhatre
-Sd- Illegible	-Sd- Illegible
Shri D. Mukherjee, Manager (I/c) HR Legal Cell	5. Shri Sudhir D. Rane

-Sd- Illegible	-Sd- Illegible
Shri Mahendra Singh, Dy. Manager-Law	6. Shri Balkrishna N. Rane
	-Sd- Illegible
	7. Shri Anil V. Varsolkar
	-Sd- Illegible
	8. Shri Chandrakant N. Shinde
	-Sd- Illegible
	9. Shri Ramkrishna R. Shinde
	-Sd- Illegible
	10. Shri Harishchandra K. Shinde
	-Sd- Illegible
	11. Shri Jaywant K. Varde
	-Sd- Illegible
	12. Shri Anil N. Kavale
	-Sd- Illegible
	13. Shri Dilip R. Patil
	-Sd- Illegible
	14. Shri Mangesh B. Thakur
	-Sd- Illegible
	15. Shri Ramchandra C. Topale
	-Sd- Illegible
	16. Shri Vinod G. Raul
	-Sd- Illegible
	17. Shri Ramakant N. Shinde
	-Sd- Illegible
	18. Shri Suhas M. Gurav
	-Sd- Illegible
	19. Shri Anant K. Karmat
	-Sd- Illegible
	20. Shri Kishor B. Shelke
	-Sd- Illegible
	21. Shri Vinod E. Bhagat
	-Sd- Illegible
	22. Shri Sanjay D. Shelke
	-Sd- Illegible
	23. Shri Indrajit R. Magar
	-Sd- Illegible
	24. Shri Rajendra G. Mankar

**Witnesses from Management :**

- Sd- Illegible
1. Shri Sachin Kushabroo Warghane  
-Sd- Illegible
2. Shri Prakash Wasudeo Alpe

**Witnesses from Union:**

- Sd- Illegible
1. Shri D. N. Vidhate, Vice President, Petroleum Employees' Union

Attachment-1

Sr. No.	Name	Covered under Original WP	Date of filing of the WP for the purpose of calculating gratuity
1	2	3	4
1	Shri Vasant Narayan Gondhali	WP No. 4720 of 1999	17/08/1999
2	Shri Sadanand R. Patil	WP No. 4720 of 1999	17/08/1999
3	Shri Umesh Janardan Thale	WP No. 4720 of 1999	17/08/1999
4	Shri Prashant H. Mhatre	WP No. 4720 of 1999	17/08/1999
5	Shri Sudhir D. Rane	WP No. 4720 of 1999	17/08/1999
6	Shri Balkrishna N. Rane	WP No. 4720 of 1999	17/08/1999
7	Shri Anil V. Varsolkar	WP No. 4720 of 1999	17/08/1999
8	Shri Chandrakant N. Shinde	WP No. 4720 of 1999	17/08/1999
9	Shri Ramkrishna R. Shinde	WP No. 4720 of 1999	17/08/1999
10	Shri Harishchandra K. Shinde	WP No. 4720 of 1999	17/08/1999
11	Jaywant K. Varde	WP No. 4720 of 1999	17/08/1999
12	Anil N. Kavale	WP No. 4720 of 1999	17/08/1999
13	Dilip R. Patil	WP No. 4720 of 1999	17/08/1999
14	Mangesh B. Thakur	WP No. 4720 of 1999	17/08/1999
15	Ramchandra C. Topale	WP No. 4720 of 1999	17/08/1999
16	Vinod G. Raul	WP No. 4720 of 1999	17/08/1999
17	Ramakant N. Shinde	WP No. 4720 of 1999	17/08/1999

1	2	3	4
18	Suhas . M. Gurav	WP No. 4720 of 1999	17/08/1999
19	Anant K. Karmat	WP No. 4720 of 1999	17/08/1999
20.	Kishor B. Shelke	WP No. 4720 of 1999	17/08/1999
21.	Vinod E. Bhagat	WP No. 4720 of 1999	17/08/1999
22	Sanjay D. Shelke	WP No. 4720 of 1999	17/08/1999
23	Indrajit R. Magar	WP No. 4720 of 1999	17/08/1999
24	Rajendra G. Mankar	WP No. 4720 of 1999	17/08/1999

नई दिल्ली, 23 जनवरी, 2015

**का.आ. 201.—**ओद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स एगॉन रेलीगर लाइफ इन्शुरन्स कंपनी लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट ओद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, चैन्नई के पंचाट (संदर्भ संख्या 93/2013) को प्रकाशित करती है, जो केन्द्रीय सरकार को 12/01/2015 को प्राप्त हुआ था।

[सं. एल-17012/19/2013-आईआर (एम)]

जोहन तोपनो, अवर सचिव

New Delhi, the 23rd January, 2015

**S.O. 201.—**In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. 93/2013) of the Central Government Industrial Tribunal/Labour Court, Chennai now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of the M/s. Aegon Religare Life Insurance Company Limited, and their workmen, received by the Central Government on 12/01/2015.

[No. L-17012/19/2013-IR(M)]

JOHAN TOPNO, Under Secy.

**ANNEXURE**

**BEFORE THE CENTRAL GOVERNMENT  
INDUSTRIAL TRIBUNAL-CUM-LABOUR  
COURT, CHENNAI**

Friday, the 19<sup>th</sup> December, 2014**Present :** K. P. PRASANNA KUMARI, Presiding Officer**Industrial Dispute No. 93/2013**

(In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2(A) of

Section 10 of the Industrial Disputes Act, 1947(14 of 1947), between the Management of M/s Aegon Religare Life Insurance Ltd. and their workman)

**BETWEEN:**

Sri N. Suresh Kumar : 1<sup>st</sup> Party/Petitioner

**AND**

- |   |   |
|---|---|
| 1. The Manager  | : 2 <sup>nd</sup> Party/1 <sup>st</sup> |
| M/s Aegon religare Life Insurance Ltd.  | Respondent                              |
| 4 <sup>th</sup> Floor, Kalluveetil Teenu Centre<br>Court Road, Nagercoil          |   |
| 2. The State Head   | : 2 <sup>nd</sup> Party/2 <sup>nd</sup> |
| M/s Aegon Religare Life Insurance<br>Co. Ltd.                                     | Respondent                              |
| 3 <sup>rd</sup> Floor, Prabha Complex,<br>2/1, L.B. Road,<br>Adyar Chennai-600020 |   |

**Appearance :**

For the 1<sup>st</sup> Party/Petitioner : M/s S. Arunachalam  
Associates, Advocates

For the 2<sup>nd</sup> Party/1<sup>st</sup> & 2<sup>nd</sup> : M/s Pass Associates,  
Respondents Advocates

**AWARD**

The Central Government, Ministry of Labour & Employment vide its Order No. L-17012/19/2013-IR (M) dated 25.10.2013 referred the following Industrial Dispute to this Tribunal for adjudication.

The schedule mentioned in that order is :

“Whether the action of the Management of M/s Aegon Religare Life Insurance Ltd. in terminating the services of Sri N. Suresh Kumar w.e.f. 02.12.2010 is legal and justified? What relief the workman is entitled to?”

2. On receipt of the Industrial Dispute this Tribunal has numbered it as ID 93/2013 and issued notices to both sides. Both sides have entered appearance through their counsel and have filed their claim and counter statement respectively. The petitioner has filed rejoinder in answer to the Counter Statement.

3. The averments in the Claim Statement filed by the petitioner in brief are these:

While the petitioner was working in the office of M/s Aegon Religare Life Insurance Co. Ltd., the first Respondent herein in the designated post of Business Manager, Agency Distribution in the Nagercoil Branch, he was terminated from service on 02.12.2010. Though the nomenclature of the post of the petitioner was Business Manager, his duty was to canvass business of Life Insurance Policies as per the target fixed by the Company

with the assistance of part-time insurance agencies approved by the Company. The petitioner was a worker coming under the definition of Section-2(s) of ID Act. The petitioner was appointed as regular employee by order dated 10.08.2010, by placing him on probation for a period of 6 months and prescribing his date of superannuation as at the age of 60. Even before he could complete 6 months period of service, he was issued a Show Cause Notice alleging misconducts like using abusive language in front of lady employees. A Show Cause Notice was issued to the petitioner and he has offered his explanation also. But the Respondent terminated the petitioner from service without considering the explanation and without conducting any enquiry. There is no substance in the charges made against the petitioner by the Show Cause Notice. They are flimsy and ill-motivated. In fact the Respondent was irked by the Trade Union activities of the petitioner. The petitioner was terminated without any notice before completing the period of probation, paying him 15 days pay in lieu of notice. The cheque sent by the Respondent in final settlement was not accepted by the petitioner. The petitioner has given a representation on 31.01.2011 seeking reinstatement in service. But there was no response from the Management to this request. The petitioner has raised the dispute accordingly. An order may be passed directing the Respondents to reinstate the petitioner in service with back wages, continuity of service and other attendant benefits.

4. The Respondents filed Counter Statement contending as follows:

The dispute is not maintainable before the Industrial Tribunal. The petitioner is not a workman as defined under Section-2(s) of the Industrial Disputes Act. The petitioner's service was terminated during the period of probation for non-satisfactory performance. The petitioner has accepted the termination in writing. The petitioner was appointed as Business Manager, Agency Distribution on probation by letter dated 05.08.2010. The duty of the petitioner was to recruit and support and manage the activities of Life Advisors for sourcing insurance policies. It was the petitioner's responsibility to check the relevant documents of the candidates recommended by him as Life Advisors. The recommendation used to be accepted by the Respondents. The petitioner was drawing salary of Rs. 27,407/- per month. Thus he was working in a managerial and administrative capacity. So the petitioner is not a workman within the meaning of Section-2(s) of the Industrial Disputes Act. The petitioner has not completed 240 days of service with the Respondents. The Respondent received complaints from the Life Advisors as well as the employees of the Respondents about the behaviour of the petitioner. He was warned for using abusive language against Life Advisor. The Respondents continued to get complaints against the petitioner against his using abusive language against the lady employees.

By e-mail dated 23.11.2010 the petitioner was asked to give his explanation. He sent a reply that he is not part of the complaints and in future also he will not be a part of any such activities. He did not give proper explanation for his behaviour. So it was deemed that he has admitted the facts stated in the e-mail. Considering his non-satisfactory services the Respondent came to the conclusion that allowing him to continue him in employment is not desirable. His service was terminated w.e.f. 02.12.2010 with payment of 15 days salary in lieu of notice. He has accepted the termination letter. This shows that he has admitted guilt. The petitioner is not entitled to any relief.

5. The petitioner has filed rejoinder denying the allegations in the counter statement and reiterating his case in the Claim Statement.

6. The evidence in the case consists of oral evidence of WW1 and MW1 and documents marked as Ext.W1 to Ext.W13 and Ext.M1 to Ext. M29.

7. The points for consideration are:

- (i) Whether the action of the Respondents in terminating the service of the petitioner from their service is legal and justified?
- (ii) What, if any, is the relief to which the petitioner is entitled?

### The Points

8. The petitioner was admittedly appointed as Business Manager, Agency Distribution in the Nagercoil Branch of the Respondent by letter of appointment dated 10.08.2010 which is marked as Ext.W2. As per the terms of appointment the petitioner was to be on probation for a period of 6 months w.e.f. the date of joining. As seen from the appointment order the petitioner is to undergo a probation appraisal at the end of 6 months and based on the appraisal report a decision would be taken to confirm the petitioner in service. By letter of termination dated 02.12.2010 the petitioner was terminated from service 20 days prior to the date of expiry of the period of probation. The petitioner is challenging this order of termination and is seeking reinstatement in the service of the Respondents.

9. Before advertiring to the question of legality of the termination of the petitioner itself, the question whether the petitioner is an employee coming under the definition of worker as per Section-2(s) of Industrial Disputes Act is to be considered. It has been contended by the Respondents in the Counter Statement that the petitioner was appointed as Business Manager and he was working in a managerial and administrative capacity and therefore he is not a workman within the meaning of Section-2(s) of the Act. This contention seems to have been raised by the Respondents even during the conciliation proceedings. Probably on account of this, in the Claim Statement, the petitioner has specifically stated that he is a workman

coming under Section-2(s) of the Act. According to him, his designation as Business Manager is only a nomenclature given to attract the public and to fetch business for the company. According to the petitioner, his duty was only to canvass the business of Life Insurance policies with the assistance of Insurance Agencies. He was actually not working in a managerial or administrative capacity and has no supervisory authority or control over the staff also.

10. There is the evidence given by the petitioner that in spite of the attractive name given to his position in the Respondent Company he was actually only canvassing policies and has nothing to do with the administration or management of the Company. MW1 examined on behalf of the Respondents has of course has stated in his affidavit of examination that the petitioner was working independently and the Life Advisors were tagged to him. He has further stated that it was the responsibility of the petitioner to check the relevant documents of the candidates recommended by him as Life Advisors and certify the same. He further stated that the petitioner was resolving the doubts of the Advisors and was also assessing the work performed by the Life Advisors.

11. It is clear from the evidence that the so called Life Advisors are only the agents of the Insurance Company and not the direct employees of the Company. According to the petitioner his duty was only to identify the agents and approval and recognition was being done by his superior Officers. His main activity was to canvass policies with the help of the Life Advisors.

12. It is seen from the admission made by MW1 during his cross-examination that the petitioner does not have any managerial or administrative capacity. The appointment orders are issued by the Human Resources Department of the Company. Issue of Charge Memo taking disciplinary proceedings, etc. are also done by the Department. He admitted that the petitioner is not entitled to take any policy decision with reference to the branch. However according to him all administrative decisions pertaining to Life Advisors can be taken by the petitioner. However, this 'decision', it has turned out from evidence, is to check the details in the recruitment forms, the samples of which are marked as Ext.M1 to Ext.M8. Yet these forms are not seen attested by the petitioner. He has only verified the original documents, MW1 has admitted. Even the sending of the recruitment forms for approval is done by someone other than the petitioner. As admitted by MW1, the available documents would not show that the Business Manager has got any administrative powers. Thus against the evidence given by the petitioner that in spite of his attractive nomenclature as Business Manager his work is not supervisory in nature, there is no evidence available on the part of the Respondents to show that he has managerial and supervisory capacity.

13. In the decision in ANAND BAZAR PATRIKA PVT. LTD. VS. THE WORKMAN reported in 1970 3 SCC 248 the Apex Court has held that even minor duties of supervisory character will not convert the Office of Senior Clerk in charge to that of Supervisor and he continues to be the workman. In the decision in ARKAL GOVINDRAJRAO VS. CIBA GEIGY OF INDIA LTD., BOMBAY reported in 1985 2 LLJ 401 the Apex Court has held again that the test to find out whether an employee is a workman is what is the primary basic or dominant nature of duties for which the person whose status under enquiry was employed. The words like managerial or supervisory may have to be understood in their proper connotation and their mere use should not detract from the truth, it was further held.

14. It has come out in evidence that the duty of the petitioner was only to canvass insurance policies with the help of Insurance Agents called Life Agents. He had nothing to do with the management or administration of the company and was not having any supervisory capacity also. So the position of the petitioner in the Respondents Company as Business Manager is only that of a workman.

15. Now it is to be seen whether there was any justification for the termination of the petitioner from service. It is not in dispute that the petitioner was terminated while he was still on probation. As seen from the Counter Statement, considering the non-satisfactory services of the petitioner the Respondents came to the conclusion that continuing him in employment was not desirable and so his service was terminated w.e.f. 02.12.2010. Ex.W3 is the Show Cause Notice served on the petitioner. The reasons for issuing the notice are as below, as seen from Ext.W3.

- (i) Using abusive language in the branch in front of lady employees.
- (ii) During review with the Manager and Area Manager, the petitioner behaved badly and again used abusive language.
- (iii) Indecent actions in the branch, also in front of lady employees.
- (iv) The petitioner never reports to the Branch in the evening.
- (v) He reports late in the morning.
- (vi) The policies sourced by the petitioner were not getting issued since many times the cheques of the customers were not honoured.

The Show Cause Notice continues that the petitioner was found to have breached his code of conduct and contract of employment with the Company on the above mentioned grounds and he is to show cause as to why action should not be taken against him, including but not limited to termination of his services from the Company

with immediate effect. Ext.W5 is said to be the explanation given by the petitioner to the Show Cause Notice. However, this does not bear any date. According to the Respondent, they did not receive this explanation. Ext.W8 is an explanation given later, after the termination. However, it could be seen from the Counter Statement itself that Show Cause Notice dated 23.11.2010 was sent to the petitioner by e-mail communication. The petitioner has sent a reply to this on 29.11.2010. He has stated in his reply that he is not part of the complaints and in future also he will not be a part of any such activities. This is in effect a total denial of the allegations made against him in the Show Cause Notice communicated to him through e-mail. The grievance of the Respondents is that this could not be taken as an explanation, probably because it is an answer in one single sentence. It was because this was found unsatisfactory he was terminated from service.

16. Ex.W4 is the letter of termination served on the petitioner. The letter states that the petitioner has not provided any explanation to the Show Cause Notice. It is further stated that in view of this it is concluded that the complaints of misbehaviour against him are true. It is also stated that the action of the Respondents are in serious violation of code of conduct amounting to breach of employment contract. Thus it could be seen from Ext.W4 that it was not because his work for which he was appointed was unsatisfactory during the period of probation, he was terminated from service. On the other hand he was terminated from service for the reason that he had used abusive language in front of lady employees, he had misbehaved and used abusive language with the Manager and Area Manager, made indecent actions again, in front of lady employees, he failed to report at the branch in the evening and reported late in the morning and also because the cheques given by the customers sourced through the petitioner were not honoured. There is not even an indication in Ext.W3 that his work at the end of the probation period was not satisfactory. On the other hand, it was on account of misconducts alleged against him as per Ext.W3, the petitioner was terminated from service. This was done without conducting any enquiry in spite of his denial of the allegations made against him in the Show Cause Notice, by his e-mail communication.

17. The Respondents seem to be harping on the terms of the letter of appointment (Ext.W2) to justify their action. As per Clause-IV of Ext.W2 the employer is to make an appraisal of the work of the petitioner at the end of 6 months and a decision is to be taken to confirm him in service or to extend the probation period or to terminate him from service. There is also a further condition in the clause that during the probation period either side will be at liberty to terminate the contract of employment by giving to the other 15 days notice in writing or salary in lieu thereof without assigning any reason for termination of the contract.

18. However, the legal position is such that the action of the Respondent could not be justified in law. If the motive for the termination is punitive, an enquiry should have been conducted before termination even if the employee was undergoing probation. This is the dictum laid down by the Apex Court in DIPTI PRAKASH BANERJEE VS. SATYENDRANATH BOSE NATIONAL CENTRE FOR BASIC SCIENCES, CALCUTTA AND OTHERS reported in 1999 3 SCC 60. It was held here that if findings are arrived at in an enquiry as to misconduct behind the back of the Officer or without a regular departmental enquiry simple order of termination is to be treated as “founded” on the allegations and will be bad. It was further held that the material which amounts to stigma need not contain in termination order of a probationer but might be contained in documents referred to in the termination order or its annexures. Such documents can be asked for or called for by any future employer of the probationer and in such case employee’s interest would be harmed and therefore termination order would stand vitiated on the ground that no regular enquiry was conducted. In Ext.W4 the allegations against the petitioner are not reproduced, however, it is clear from the order that the termination was on the basis of the charges of misbehaviour against him. So certainly it would act as a stigma upon the petitioner when he tries for future employment. Before such termination, enquiry should have been conducted by the Respondents.

19. The counsel for the Respondents had produced a plethora of judgments of the Apex Court as well as different High Courts, all regarding termination of employee during the period of probation. One of them is PARAMJEET VS. DIRECTOR OF PUBLIC INSTRUCTION (SCHOOLS) AND OTHERS reported in 2010 14 SCC 416. It was a case where a probationer was terminated from service on account of his non-satisfactory performance. In this judgment also the Apex Court has indicated that the termination is penal in nature it will be bad in law. In the above case, the termination having been on account of non-satisfactory performance of the probationer alone it was held that departmental enquiry was not required before termination. I do not propose to refer to other judgments relied upon by the counsel for the Respondents for the reason that all these are relating to cases where termination was on account of dissatisfactory performance and not because of allegations of misconduct which will attract stigma on termination. It is apparent from the dictum laid down by the Apex Court that in case the termination is penal in nature an enquiry should have been conducted prior to the termination.

20. One contention that has been raised on behalf of the Respondents is that subsequently the petitioner has accepted the termination. Ext.M23 is relied upon in this respect. In this undated letter the petitioner has stated that he is accepting the termination, that he understands

his mistakes and that further issues will not happen from his side. According to the Respondents, on account of this letter also the petitioner has no right to challenge the termination. It is in fact idle for the Respondents to raise such a contention. There is Ext.W7 by which the petitioner has raised his protest stating that he is not accepting the termination which is not legal, moral or ethical and he is returning the cheque forming part of the letter received by him. Even assuming that the petitioner has accepted the termination by Ext.M23, the termination having been against the legal norms he has every right to challenge the same. I find that the termination is not legally justifiable. The petitioner is entitled to be reinstated in service. Accordingly an award is passed as follows:

The Respondents are directed to reinstate the petitioner in service within one month of the award with 25% back wages, continuity of service and all other attendant benefits. If back wages is not paid within one month of the award it will carry interest @ 9% per annum from the date of the award. ‘

The reference is answered accordingly.

K. P. PRASANNA KUMARI, Presiding Officer

#### **Witnesses Examined**

For the 1<sup>st</sup> Party/Petitioner : WW1, Sri N. Suresh Kumar

For the 2<sup>nd</sup> Party/ : MW1, Sri Jitin Parekh  
Management

#### **Documents Marked**

#### **On the Petitioner’s side**

Ex.No.	Date	Description
Ex.W1	22.06.2010	Letter of offer
Ex.W2	10.08.2010	Letter of appointment of the petitioner
Ex.W3	23.11.2010	Show Cause notice to the petitioner
Ex.W4	02.12.2010	Termination letter to the petitioner
Ex.W5	-	Explanation given by the petitioner to the Show Cause Notice and termination letter
Ex.W6	31.01.2011	Letter of full and final settlement given to the petitioner
Ex.W7	23.02.2011	Refusal letter of the petitioner to the full and final Settlement
Ex.W8	31.01.2011	Detailed explanation given by the petitioner to the Respondent
Ex.W9	08.11.2011	Letter from Respondent to the Assistant Commissioner of Labour, Nagercoil

Ex.W10	30.06.2012	Conciliation failure letter issued by the Assistant Labour Commissioner (Conciliation), Nagercoil	Ex.M15	20.11.2010	Internal E-mail Communication from S. Santhiya Rani, CSE Operations regarding the attitude of petitioner
Ex.W11	30.07.2012	Reply of the management before the ALC (C), Madurai	Ex.M16	20.11.2010	Internal E-mail communication from VS Mohan Kumar
Ex.W12	12.12.2012	Reply filed by the management before the ALC (C), Madurai	Ex.M17	23.11.2010	Internal E-mail communication of the Respondent regarding the various complaints received against the petitioner and warning issued to petitioner
Ex.W13	-	Letter from the petitioner to the Respondent			

**On the Management's side**

Ex.No.	Date	Description	Ex.M18	23.11.2010	Internal e-mail communication from VS Mohan Kumar
Ex.M1	-	Recruitment form of Felix Sterling	Ex.M19	23.11.2010	E-mail communication from the Respondent regarding unsatisfactory performance of the petitioner
Ex.M2	-	Recruitment form of Paul Singh			
Ex.M3	-	Recruitment form of Rajasekaran			
Ex.M4	-	Recruitment form of Selva Kumar	Ex.M20	29.11.2010	Internal e-mail communication from Nicholas P. Delphin to Respondent regarding the humiliation that he suffered with petitioner
Ex.M5	-	Recruitment form of Prakash			
Ex.M6	-	Recruitment form of Siva			
Ex.M7	-	Recruitment form of Anil Ruban	Ex.M21	29.11.2010	Reply e-mail from the petitioner to Respondent
Ex.M8	-	Recruitment form of Chenthil	Ex.M22	02.12.2010	Letter of termination of petitioner during the period of probation on account of his non-satisfactory performance
Ex.M9	05.08.2010	Letter of appointment on probation petitioner was appointed as Business Manager—Agency Distribution –Nagercoil)	Ex.M23	-	Letter from petitioner to Respondent accepting his mistakes and termination and also declaring that he has no issues against respondent; and receipt of payment
Ex.M10	25.09.2010	E-mail communication from Respondent to petitioner with a warning			
Ex.M11	18.11.2010	Internal e-mail communication of the Respondent regarding the conduct of the petitioner	Ex.M24	Set., Oct. & Nov. 2010	Pay slips of the petitioner
Ex.M12	19.11.2010	Letter from K. Rajasekaran, Life Advisor to the Respondent complaining the non-cooperative attitude of petitioner	Ex.M25	30.07.2012	Letter from Respondent to Asstt. Labour Commissioner
Ex.M13	19.11.2010	Internal E-mail Communication	Ex.M26	12.12.2012	Letter from Respondent to Asstt. Labour Commissioner of Labour
Ex.M14	20.11.2010	Internal e-mail communication from Gandhimathy, Asstt. Training Manager complaint about petitioner's indecent behavior and non-participation in the office activities	Ex.M27	23.08.2012	Office Memorandum from Ministry of Labour
			Ex.M28	23.10.2012	Letter from petitioner to Ministry of Labour
			Ex.M29	23.07.2011	Proof of encashment of 15 days salary towards salary in lieu of notice.